Supreme Court of the United States,

OCTOBER TERM, 1924, No. 343.

BEHN, MEYER & COMPANY, LIMITED,
Appellant,

v.

THOMAS W. MILLER, as Alien Property Custodian, and FRANK WHITE, as Treasurer of the United States,
Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF ON BEHALF OF THE APPELLANT.

WILLIAM D. GUTHRIE,
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LIST OF CASES.

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This cause comes before the court upon an appeal by the plaintiff from a decree of the Court of Appeals of the District of Columbia affirming a decision of the Supreme Court of the District which dismissed the bill of complaint on motion of the defendants. The opinion of the court below is printed at pp. 9-11 of the record* and is reported in 296 Fed. 1002.

The plaintiff is a corporation organized and existing under the laws of the British Straits Settlements and

* The page references hereafter noted are to the record unless otherwise stated.

doing business in the British Asiatic possessions, the Far East and the Philippine Islands, and its bill of complaint was based upon the claim that it was "not an enemy or ally of enemy" within the meaning and intent of the Trading with the Enemy Act as amended (40 Stat. 411, 459, 460, 1020; 41 *id.* 35, 977, 1147; 42 *id.* 351, 1511), and, therefore, that it was entitled by virtue of subsection a of section 9 of the Act to sue for the wrongful seizure and liquidation of its property by the Alien Property Custodian upon the mistaken assumption that it was an "enemy" (p. 1 *et seq.*). The motion of the defendants to dismiss proceeded upon two contentions: (1) that the plaintiff, notwithstanding the fact that it was a corporation of Great Britain with neutral stockholdings and was not doing business in any enemy territory, was, nevertheless, to be deemed an enemy under the Act simply because a majority of its shares of stock (but not all) was German owned, and (2) that the plaintiff was not a corporation "entirely owned" by non-enemy subjects (p. 4).

These contentions raise important and far-reaching questions concerning the applicability and effect of the provisions of the Trading with the Enemy Act as amended.

Statement.

The bill sets forth, and the motion to dismiss admits, the following facts:

The plaintiff, Behn, Meyer & Company, Limited, is and since 1905 has been a corporation organized under

the laws of the Straits Settlements, which is a British colonial possession; as such corporation, its business and residence had never been in Germany or in any other enemy or ally of enemy territory, and it traded and carried on business entirely with and in the British colonies and elsewhere in the Far East and with and in the Philippine Islands (pp. 1-2).

Among other branches, it had several establishments in the Philippine Islands, and they were in charge of its manager, J. M. Menzi, who was one of its stockholders and a Swiss citizen (p. 2). The Philippine branches were prosperous and for several years prior to the war had done a good business (p. 2). In February, 1918, the Alien Property Custodian seized these branches. Thereafter he caused them to be liquidated, and thus to all practical intents and purposes destroyed the business in the Philippine Islands. The proceeds of the liquidation are in the hands of either the Alien Property Custodian or the Treasurer of the United States, the defendants in the suit at bar (p. 2); and the plaintiff sued therefor as authorized by law (last paragraph of sec. 7-c of the Trading with the Enemy Act as amended—40 Stat. 1020; p. 3).

It is the claim of the plaintiff corporation that the determination that it was an "enemy" under the Trading with the Enemy Act, if any such determination was in fact ever made, and the consequent seizure and liquidation of its property as that of an "enemy", were unwarranted and illegal, inasmuch as it was not an "enemy" since (1) it was not incorporated within enemy

territory, (2) did not reside there, and (3) did not do business there (p. 3), and hence did not in any particular fall within the statutory definition of the term "enemy" contained in section 2 of the Act.* It insists that the fact that a majority of its stock was enemy owned (p. 6) is immaterial. That fact might have given the Alien Property Custodian the right to take the stock or beneficial interest of its enemy stockholders, which he did not purport to do; but it did not confer upon him the right to seize and sell or liquidate the plaintiff's business, to the detriment, not only of its German stockholders, but of its neutral and friendly stockholders as well.

For reasons similar to those above stated, it is contended that it was not an "ally of enemy" as defined in the Act (p. 3), and it is believed that no serious contention to that effect will be made.

The bill further shows that the plaintiff was never proclaimed by the President to be an "enemy" or "ally of enemy" (p. 2); that, prior to bringing suit and in due time, it filed with the Alien Property Custodian the notice of claim required by law (sec. 9, Trading with the Enemy Act; p. 4); that the suit was commenced within the statutory period (sec. 9 as amended December 21, 1921, c. 13, 42 Stat. 351; pp. 1-2), and that the Straits Settlements and Great Britain, in like cases to this, extend reciprocal rights to citizens of the United States (sec. 9-e; p. 3).

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* This section is quoted in full in Point I, *infra*.

Outline of the Appellant's Contentions.

It may aid the court to have before it at the outset a brief epitome of the issues and argument. To that end will be here set forth, in the simplest terms, the essential considerations which control the disposition of the cause.

1. First and foremost stands the indisputable fact that the property of the plaintiff was unlawfully seized by the Alien Property Custodian in February, 1918. Then, as now, the Trading with the Enemy Act defined in perfectly clear and unambiguous language who was an "enemy" within the meaning of the Act and authorized seizure by the Alien Property Custodian only of property of such "enemies." Section 2 of the Act contained the legislative definition of "enemy"; and, as to corporations, it declared them "enemies" only when (1) they were organized in an enemy country, or (2) did business in enemy territory.* That definition is, as the court will remark on reading it, on its face, both exhaustive and explicit. And, beyond all possibility of question, it does not, in any respect, include the plaintiff. The latter is not a corporation of any enemy country, and it does not and never did any business within any enemy territory. The court should, therefore, bear in mind that Congress did not denominate the plaintiff an enemy, but that, nevertheless, the plaintiff was subjected to seizure of its property by the Alien Property Custodian. This seizure was plainly a wrongful and tortious act.

* This section is printed in full in Point I below.

No attempt has heretofore been made by the defendants to point to any portion of section 2 of the Act, the statutory definition of "enemy," which could by any possibility include the plaintiff and thus justify the original seizure of its property. Perusal of section 2 of the Act will readily convince the court that it is, indeed, too plain to permit of construction. Consequently, "the courts have no choice but to follow it" as it is written, "without regard to the consequences." *Commr. of Immigration* v. *Gottlieb*, 265 U. S. 310, 313. Notwithstanding this settled rule of law however, the defendants have in effect contended in the courts below that the plaintiff corporation must be deemed an "enemy" within the meaning of the Act, so that its property was lawfully subject to seizure in the beginning and may now be lawfully detained, solely because a majority of its stockholders were Germans. The court will, of course, at once remark that there is absolutely nothing in section 2, the statutory definition of "enemy," which even remotely suggests such an idea, and that, therefore, the defendants' contention really is that there must be written into the section, by judicial construction, a wholly new provision or exception, which Congress did not put there, namely, that a corporation of a neutral or allied state should also be deemed an "enemy" if a majority of its stockholders were enemies. This court has, however, declared that "where the legislature makes a plain provision, without making any exception, the courts of justice can make none, as it would be legislating to do so." *Maxwell* v. *Moore*, 22 How. 185, 191.

In the case at bar it is, moreover, unusually clear that such a construction as the defendants urge would be but

Decided by this court, Oct. 20, 1924.

the veriest judicial legislation. As is shown below, the records of Congress plainly disclose that the theory of stock control as effecting enemy character in corporations, now urged by the defendants, was considered and deliberately rejected by the draftsmen of the Act. Again, the records of Congress hereinafter referred to further reveal that, after the Trading with the Enemy Act was passed, the Alien Property Custodian expressly requested Congress to amend the Act so that, as the Custodian's counsel expressed it, "it would authorize the seizure and the ultimate disposition of the entirety of a property which was controlled by the enemy, although [the enemy] might not be the complete owner of it," and not, as the law then did, "just authorize the sale of what belonged to the enemy." But, as is shown below, Congress refused to make any such amendment. That was in June, 1918, when the war was flagrant; and even then Congress declined to enact a measure which would have empowered the Alien Property Custodian to seize and sell the property of a non-enemy corporation most of whose stock was enemy-owned. In the face of such a record, this court is, nevertheless, requested to legislate into the Act the very provision which Congress repeatedly declined to pass and put into effect.

The court below felt constrained in candor to concede that the plaintiff was not an "enemy" within the meaning and intent of the Act. It expressly admitted that the "plaintiff is in its corporate entity non-enemy" (record, p. 10; 296 Fed. at p. 1003). It purported to find, however, a barrier to recovery by the plaintiff, a non-enemy, in acts passed in 1920 and 1923, long after the cessation

of actual war, and with the purpose, as the court below properly declared, "to liberalize and enlarge the right of recovery" (*id.*). Presently those later enactments will be considered; now it should suffice simply to point out that the inevitable result of the concession of the Court of Appeals is an acknowledgment of the wholly wrongful character of the seizure of the plaintiff's property in February, 1918, when the acts of 1920 and 1923 did not exist.

Hence it is submitted that it is plain upon the face of the Act itself (1) that the plaintiff is not an "enemy" and (2) that the seizure and sale of its property by the Alien Property Custodian was illegal and void.

2. In such circumstances, it would seem only just and natural that the law should afford a remedy. And so the Act in fact did and does afford. By section 9 of the Act as it stood originally, and by subsection 9-a, as the same provision has now been renumbered,* the right to recover property wrongfully taken by the Alien Property Custodian was and is expressly accorded to one "not an enemy or ally of enemy." Here, as the court will observe upon reading the section, is a plain and explicit grant of a remedy to an aggrieved party like the plaintiff, namely, to one who is "not an enemy." The manifest applicability of the statutory language to the case at bar cannot be reasonably disputed. But in this relation, again, the defendants present to the court a contention which does violence, not only to the clear and unambiguous language of the Act, but to the indubitable intent of Congress as well.

* The pertinent portions of section 9 are quoted below in Point II and printed in the appendix hereto.

As the court will doubtless recall, immediately after the Armistice, a loud cry arose for relief from some of the severe provisions of the Trading with the Enemy Act. It was felt that, in the stress of the great struggle, much property had been seized by the Alien Property Custodian which should no longer be held by him now that actual hostilities were over. Property of Americans and of allied and neutral citizens caught in the war zone; property of American, allied and neutral women whose husbands were enemies; property of diplomats, etc., etc., had been taken by the Custodian. The necessity for the continued withholding of such and other property was clearly past. Allied and neutral countries were protesting to our State Department in many instances, and the Secretary of State found himself under grave embarrassment in the conduct of our foreign relations. Consequently, it seemed desirable that the property of those who were only technical enemies at most, should be restored. To that end, Congress passed the act of June 5, 1920 (c. 241, 41 Stat. 977).*

This enactment retained former section 9 of the Act unchanged, except by renumbering it as subsection 9-a. That is to say, the remedy theretofore accorded to one "not an enemy or ally of enemy" was preserved. That was only as reason required that it should be. No one desired to interfere with non-enemies and their property; they had been protected while the war had been raging, and there was clearly no reason for cutting off their rights now that the war was virtually at an end; they, moreover, required no new or further relief, for

* The full text of this act is given in the appendix.

section 9 adequately provided for them. As the law stood they had a right of recovery, and reenactment of the provision without alteration maintained that intact.

"Enemies," however, stood upon a totally different footing. Unless some new provision were made for them, they would continue to be remediless, for section 9 (now subsection 9-a) afforded relief only to one "not an enemy or ally of enemy." Accordingly, subsection b, a wholly new provision, was added to section 9. Subsection b included eight separately numbered paragraphs. Each of these specified a class of enemy persons to whom some measure of relief would now be accorded. Paragraph 1 permitted an ally or neutral in enemy territory to recover his property; paragraph 2 a neutral woman married to an enemy; paragraph 3 an American woman married to an enemy; paragraph 4 an enemy diplomat; paragraph 5 an interned enemy; paragraph 6 an enemy foreign partnership or corporation entirely non-enemy-owned; paragraph 7 Bulgaria and Turkey and their subdivisions, and paragraph 8 Germany and Austria, in so far as their diplomatic property was concerned. For the benefit of those classes of "enemies", the prior restrictions upon recovery were relaxed. But, as the court will observe, not one of these numbered paragraphs of the new subsection b purported to be either a new definition of the statutory term "enemy", or a new restriction upon the rights of non-enemies.

Perusal of subsection b will show that its purpose was solely to ameliorate the condition of certain classes of enemy persons and not at all to limit or repress the prior rights of non-enemies, which had in fact been left untouched all through the actual war. The briefest an-

alysis of the eight classes affected will demonstrate that fact. Thus, paragraph 1 dealt with allies and neutrals. Of course, if they had not resided in or done business in enemy territory, they would not be "enemies" within the meaning and definition of the Act, and, therefore, would clearly have been entitled to recover their property under the Act as it stood unamended. Paragraph 1 would thus be a worthless addition to the Act, a mere redundancy, unless it did, what was its obvious purpose, namely, give relief to allies and neutrals theretofore classed as "enemies" under section 2 of the Act because either resident in or doing business in enemy territory. In his letter of May 11, 1920, to the chairman of the House Committee on Interstate and Foreign Commerce, the Attorney-General distinctly expressed this view (House Report No. 1089, 66th Cong., 2nd sess., June 2, 1920, p. 6). Hence paragraph 1 was manifestly an enactment for the relief of "enemies" as theretofore defined.

A neutral or allied woman married to an enemy was plainly an "enemy" herself under the Act. Paragraph 2, therefore, now aided her.

Likewise an American woman married to an enemy was also an "enemy". Paragraph 3 was, consequently, designed to help her.

An enemy diplomat was, of course, an "enemy". The seizure of his property, however, was inconsistent with modern and enlightened international practice and custom;* and, therefore, paragraph 4 sought to remedy that situation.

* See letter of the Secretary of State to the Attorney-General, May 5, 1920, to this effect. House Report No. 1089, June 2, 1920, 66th Congress, 2nd session, p. 5.

An interned enemy was obviously an "enemy." But after the Armistice there was no longer any sound reason for detaining his property, and so paragraph 5 permitted him to recover it back.

There was a number of allied and neutral corporations doing business in Germany. But many of those corporations were wholly non-enemy-owned. They were, therefore, only technically "enemies," and paragraph 6 was obviously intended to permit them to have back their property previously and rightfully seized by the Alien Property Custodian. And the same was true of certain German corporations wholly non-enemy-owned.

The Governments of Bulgaria and Turkey and their political subdivisions were beyond doubt "enemies" under the law. Hence, paragraph 7 was needed to relieve them.

So, also, were the Governments of Germany and Austria. But as diplomatic property of enemy nations is ordinarily respected, paragraph 8 was aimed at bringing the situation in that respect into accord with the best international usage.

It is submitted that it must needs be manifest from an examination of the eight numbered paragraphs of subsection b of section 9 that their whole purpose and sole intent were to affect the situation of certain classes of "enemies" only to their betterment, and not in any respect to limit or condition the rights of non-enemies, who were separately covered and provided for in subsection a.

3. It is, however, the defendants' contention that a proper construction of paragraph 6 of subsection b of section 9 of the Act requires the court to hold that a

corporation, which is unquestionably not an "enemy" under the express statutory definition in section 2 of the Act, whose property was originally illegally seized by the Alien Property Custodian, which has never been expressly declared an "enemy" in any act of Congress, which is indisputably within the plain terms of subsection a of section 9 and thus entitled to recover its property thereunder, must, nevertheless, be now held an "enemy" and recovery denied to it, because it does not come within paragraph 6 in that it is not entirely non-enemy-owned. In this manner, a provision enacted in June, 1920, when we were at virtual peace, and manifestly intended for the relief of certain enemy corporations and no more, is sought to be transmuted into a restriction upon non-enemy corporations and their rights, which were left untouched during the actual conflict.

The inevitable hardship and injustice to which such an unnecessary and repressive interpretation of the amendment of June 5, 1920, would commit the court, should be clearly appreciated. It would necessarily follow from the defendants' construction that any corporation of an allied or neutral country having a *single* share of stock owned by an enemy would have to be held to be in the situation of an "enemy" and without any right to recover its property from the Alien Property Custodian. Thus, for example, if the Alien Property Custodian had seized the ships of the Cunard Line, which is a British corporation not doing business in or with enemy territory, and was one of Great Britain's most effective instruments in the winning of the World War, that outrage could not be redressed and the property

returned if it chanced that *one* share of its stock was held by a German! Under the defendants' theory, it would be immaterial that the Cunard Line was a non-enemy under the express definition of the Act, and that an express and explicit provision (section 9-a) accorded it a right of recovery as such non-enemy.

The court below has, indeed, expressly accepted this preposterous outcome. In *Swiss Nat. Ins. Co.* v. *Miller*, 289 Fed. 571, 576, referring to this aspect of its interpretation of the amendment of June 5, 1920, the Court of Appeals admitted that—

> "It is true that the provision as thus interpreted has the result of classifying a corporation as an enemy, even if only one stockholder out of many should be an enemy, and this may be said to be a drastic rule."

"The absurdity of the result"—particularly as it purports to be spelled out of a statute whose purpose was, as the court below expressly declared in the case at bar (296 Fed. at p. 1003; p. 10), "to liberalize and enlarge the right of recovery"—surely "is the strongest possible argument against the correctness of such a construction of the statute." *Badaracco* v. *Cerf*, 53 Fed. 169, 172.

4. Such an unreasonable result is in no sense warranted by the language or purpose of the amendatory act. Every word therein can be given its full and natural meaning without working any absurdity or injustice. All that need be borne in mind is that section 9, in its subsections a and b, deals with two wholly different classes of claimants. Subsection a, on the one hand, covers the case of one "not an enemy or ally of enemy," as it ex-

pressly declares. To such parties, it continues to accord the recovery of property wrongfully or mistakenly taken by the Alien Property Custodian. Subsection b, on the other hand, concerns itself solely with "enemies" and it authorizes relief to certain classes of them even though the original seizures by the Alien Property Custodian were in all respects lawful. The two subsections are, therefore, independent of each other, and the limitations imposed upon "enemies" in subsection b and its various paragraphs have no necessary or reasonable relation to the wholly different class of claimants regulated in subsection a. In this view the scheme of the amendatory act becomes perfectly plain: A non-enemy, whether individual or corporation, may recover property which was wrongfully or mistakenly seized. Certain classes of "enemies", whose property was rightfully seized under the Act, are now given a new right of recovery. In one of these classes of "enemies" thus benefited under subsection b are corporations either organized or doing business in enemy territory, and they may now become claimants, but only if entirely non-enemy-owned. To such "enemies", and to them only, and not to any non-enemies, is paragraph 6 of subsection b applicable. That paragraph, however, has no relevancy to subsection a nor to the aggrieved non-enemies there expressly and distinctly provided for. Such non-enemies recover under subsection a.

5. While this cause was pending in the courts below, the act of March 4, 1923 (c. 285, 42 Stat. 1511), or the so-called Winslow Law,* was passed. Its primary purpose

* The pertinent portions thereof are printed in the appendix.

was to authorize the return by the Alien Property Custodian of at least ten thousand dollars, or the equivalent thereof in property, to every "enemy", individual or corporate, and otherwise to grant relief to "enemies". The amendatory act accomplished its purpose principally by re-enacting section 9 of the Act as amended June 5, 1920, with minor alterations, and by adding to the eight classes of "enemies" theretofore provided for in the act of June 5, 1920, three new classes; that is to say, in paragraph 9 of subsection b of section 9 it was now provided that individual "enemies" could have back ten thousand dollars; in paragraph 10 the same measure of relief was accorded to partnership and corporate "enemies", and in paragraph 11 *enemy* partnerships and corporations which were more than fifty per cent owned by non-enemies, were authorized to recover all their property, theretofore rightfully seized, from the Alien Property Custodian.

Applying the same method of reasoning which we have discussed above in respect of the defendants' contention as to the effect of paragraph 6 of subsection b of section 9, the learned court below held that paragraph 11 barred the plaintiff's right of recovery in the case at bar; that this clause, clearly intended only to afford relief to an additional class of "enemies" under the Act, operated, nevertheless, to limit the right of recovery by non-enemy corporations and to reduce the rights in this regard which were expressly granted to injured non-enemies under subsection a and which had been theirs from the beginning and all through the war. In other words, it

was held that a provision relating only to *enemy* corporations should be construed to apply to allied or neutral corporations not within the statutory definition of enemy.

I.

THE PLAINTIFF CORPORATION IS NOT AN "ENEMY" OR "ALLY OF ENEMY" WITHIN THE MEANING OF THE TRADING WITH THE ENEMY ACT.

A.

As to the plain language of the statute.

The statute embraces within itself a comprehensive scheme for dealing with enemies, their allies, their property, debts, etc., and to that end contains controlling and carefully framed definitions of the principal terms employed in the Act. Section 2 defines the terms "enemy" and "ally of enemy" as used in the Act as follows:

> "That the word 'enemy', as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—
>
> "(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

"(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

"(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'enemy'.

"The words 'ally of enemy', as used herein, shall be deemed to mean—

"(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

"(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent or agency thereof.

"(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States wherever resident, or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'ally of enemy'."

Thus the Act of Congress declares in mandatory terms that the word "enemy, as used herein, shall be deemed to mean, for the purposes . . . of this Act," what is above quoted. Manifestly, the term thus defined in the Act cannot be accorded some other or different meaning in any part of the statute without in effect overruling this express mandatory declaration of Congress, and certainly only the most compelling reasons and the clearest language and proof of a different legislative intent would warrant any other conclusion. As was well stated by Mr. Justice Brewer when a Circuit Judge in *In re Jackson,* 40 Fed. 372, 374:*

> "Where a term is used and defined in the opening part of a statute, the use of that term thereafter in the statute is with the same meaning and the same definition."

Turning to the definition of the terms "enemy" and "ally of enemy," in the opening part of the Act, it must be at once apparent beyond question that the plaintiff corporation does not come within the statutory definition. It is not "resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war;" it is not "doing business within such territory;" it is not "incorporated within such territory," and there is not the slightest pretense that it is an enemy governmental agent or agency, or has ever been proclaimed an "enemy" by the President. These are the essential requisites to enemy status under the Act, and the plaintiff corporation possesses

* Referred to with approval in *Cook* v. *United States,* 138 U. S. 157, 174.

none of them. It is a corporation of the Straits Settlements. It is, therefore, of British citizenship, nationality and allegiance, to the extent that a corporation may be said to have citizenship or nationality, or to owe allegiance to a sovereign. It has or had business establishments in the Straits Settlements, British North Borneo, Java, Sumatra, Siam, India and the Philippine Islands, and in that sense may perhaps be deemed resident in those places. But it is not, and in no sense ever has been, resident in Germany, or Austria, or in any other enemy or ally of enemy territory, and never has done any business therein (pp. 2, 3). It is, therefore, indisputable that the plaintiff corporation is not an "enemy" under the explicit terms and definitions of the Act.

Neither is it an "ally of enemy", as defined in the statute. It is not "resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war;" it is not "doing business within such territory;" it is not "incorporated within such territory;" it has never been proclaimed an ally of any enemy by the President, and it is not any agent, agency or instrumentality of any ally of the enemy.

In other words, it ought to be too plain to admit of reasonable difference of opinion that the plaintiff corporation cannot be denominated an "enemy" or "ally of enemy" under the Trading with the Enemy Act, as those terms are there clearly and explicitly defined.

It was necessary, therefore, for the defendants, in order to denounce the plaintiff corporation as an "enemy" whose property was subject to seizure and sale

or liquidation under the Act, to disregard the plain and unambiguous language of the statute and to urge the court to adopt some notion of so-called "public policy" or alleged legislative purpose not expressed in or apparent from the language of the Act nor warranted by its terms. Justification for thus disregarding the plain words of a statute was deemed by the defendants to arise from the fact that a majority of the plaintiff's stock was held by German stockholders. That is thought to be sufficient ground for condemning the plaintiff corporation as an "enemy" and for capturing and destroying, not merely the interest and property rights of the enemy stockholders, but the interest and property rights of the minority stockholders as well, notwithstanding the fact that they may be American, allied or neutral citizens.

If Congress had intended, for example, that a British corporation should be treated as an "enemy" under the Trading with the Enemy Act whenever a majority of its stock was held by Germans, it would undoubtedly have so provided in the statute. The whole subject was before it. One of the problems with which it had to deal was what to do about corporations of various kinds. As the definitions embraced in section 2 of the Act make plain, Congress considered corporations, both domestic and foreign, for the purpose of exhaustively classifying them as enemies or friends, and deliberately determined that only such corporations should be enemies as were incorporated in enemy territory or did business there if elsewhere incorporated. It said nothing about converting into an "enemy" a British corporation most of whose stock was in German hands. Congress must, of

course, have been aware that there probably were many such corporations doing business in the United States.

The subject had been previously dealt with in England both by statute (4 & 5 Geo. V. c. 87; 5 & 6 Geo. V. c. 105, secs. 1 and 4) and decision (*Daimler Co. Ltd. v. Continental Tyre & Rubber Co.* [1916], 2 A. C. 307), and it is beyond dispute that both the legislation of Parliament and the decisions of the British courts were before the draftsmen of the Act adopted by Congress. Congress thus knew that it had been declared in the House of Lords that a corporation was to be deemed an enemy if a majority of its stock was enemy-owned, quite regardless of the fact that it was a British incorporation and did business in enemy territory. Congress also knew that it had been enacted by Parliament that a company with one-third of its stock enemy-owned should be subject to investigation by the Board of Trade (4 & 5 Geo. V. c. 87, sec. 2), and that if it appeared to the Board of Trade that the control or management of the company had been so affected by the state of war as to make that course expedient, then the Board was authorized to have a controller appointed to take over the company's business and property (*id.*, sec. 3), or, if it saw fit, to have the company wound up (5 & 6 Geo. V. c. 105, sec. 1). It had also previously been held in France that a company incorporated there or in Brazil was not an enemy, no matter who were its shareholders (Rouen, 1st Chambre, Nov. 2, 1915, Clunet, Jour. de droit int. 233, 1916; Rouen, 1st Chambre, Jan. 19, 1916, Gaz. des trib., Mar. 30, 1916).

The attention of Congress was in this manner sharply directed to the course which the United States should

pursue in respect of corporations with a majority of enemy stockholdings.

Coming into the World War when the United States did, after England, France, Belgium, Russia, Italy, Japan and others, it was obvious that that problem had to be dealt with in the light of the fact that the Allied and Associated Powers had already exercised their power to seize enemy-owned property. The German stockholdings in British corporations, for instance, had already been taken by the English authorities, at least in the great majority of cases (see, e. g., c. 10b, 5 & 6 Geo. V). Such corporations could, therefore, as a practical matter, be of only slight interest to the United States. It was of no practical importance for the United States to make particular provisions with respect to corporations of the Allied and Associated Powers or neutral corporations doing business in their territory. Whatever the enemy stockholdings in them might be, the powers in question, it was reasonable to presume, had already effectively dealt with them. The number of neutral corporations, that is, Dutch, Spanish, Norwegian, etc., doing business in the United States, was comparatively small, and those with a controlling German stock interest even smaller. The whole matter may well have seemed to Congress of relative unimportance. It, therefore, left such cases to be dealt with by the other provisions of the Act, namely, those which in general terms authorized the seizure by the Alien Property Custodian of every species of enemy-owned property and every right or beneficial interest of any enemy (see, e. g., sec. 7 e as amended).

What Congress has thus dealt with and thus left unaffected, no executive official and no court may alter,

The statutory definition of the term "enemy" may not now be enlarged beyond the scope and effect deliberately accorded thereto by Congress. *Waite* v. *Macy,* 246 U. S. 606, 608, affirming 224 Fed. 359, 362; *Williamson* v. *United States,* 207 U. S. 425, 461; *United States* v. *George,* 228 U. S. 14, 20; *United States* v. *United Verde Copper Co.,* 196 U. S. 207, 215.

The language of section 2 of the Act is clear beyond question. Its literal meaning must, therefore, be accepted. It permits of no construction by the judiciary, and for a court to alter its unambiguous terms would be, not to interpret, but to legislate. *United States* v. *Goldenberg,* 168 U. S. 95, 102-3; *Mackenzie* v. *Hare,* 239 U. S. 299, 308; *Caminetti* v. *United States,* 242 U. S. 470, 485; *United States* v. *Standard Brewery,* 251 U. S. 210, 217. As this court has repeatedly declared:

> "Nothing is better settled than that, in the construction of a law, its meaning must first be sought in the language employed. If that be plain, it is the duty of the courts to enforce the law as written" (*United States* v. *Standard Brewery, supra*); and, again, that—
>
> "It would transcend judicial power to insert limitations or conditions upon disputable considerations of reasons which impelled the law, or of conditions to which it might be conjectured it was addressed and intended to accommodate" (*Mackenzie* v. *Hare, supra*).

Read in the light of settled principles, it is submitted that the statutory definition of "enemy" contained in section 2 of the Act may not be expanded by construction, and that, as the Act nowhere stamps as an "enemy" an allied or neutral corporation a majority of whose stock is owned by Germans, the courts may not transmute such a corporation into an "enemy."

B.

As to the actual intent of Congress.

There is, moreover, conclusive proof, aside from the unambiguous language of the Act itself, that Congress deliberately refused to go behind the corporate entity and take cognizance of the personnel of the majority stockholders for the purpose of characterizing the corporation as an "enemy", and that it deliberately and advisedly made the criteria governing the subject the conditions enumerated in section 2 of the Act, and no others.

It will readily be recalled that before the enactment of the Trading with the Enemy Act in October, 1917, it had been declared in the House of Lords in the case of *Daimler Company, Ltd.* v. *Continental Tyre & Rubber Co.*, (1916) 2 A. C. 307, that the test of the enemy character of a British corporation doing business in England was the nature of the control thereof, and that where it appeared that the majority of the stock of such a corporation was owned by Germans, that circumstance of itself marked the company as an enemy. The opinions in that case were before the draftsman of the bill which became our Trading with the Enemy Act of October 6, 1917, and he was aware of the differences of opinion to which it had given rise and the difficulties to which it had led in England. As repeatedly stated to Congress (see, *e. g.*, Hearings before Committee on Interstate and Foreign Commerce of the House of Representatives, 65th Congress, 1st session, on H. R. 4704, p. 12), the bill proposing the Trading with the Enemy Act was the result

of the collaboration of the Department of Justice with the State, Commerce and Treasury Departments under the guidance of Mr. Assistant Attorney-General Warren, who appears to have framed the bill and who attended the hearings before and advised the committees of the Houses of Congress. At those hearings the subject here under consideration was discussed by witnesses, by legislators (*id.* p. 85 *et seq.*) and by Mr. Assistant Attorney-General Warren (see letter, *id.* pp. 96-7), and was ultimately embraced in a report of the Senate Committee (Sen. Rep. No. 113, 65th Congress, 1st session, p. 4).

An examination of the public documents above referred to establishes beyond doubt the deliberate character of the rejection by Congress of the doctrine of the *Daimler* case, or the so-called "stock control rule" it put forward, which is now urged by the defendants as the test of the enemy status of a corporation organized in a non-enemy jurisdiction and doing no business in any enemy country. The public records show that Mr. Clayton J. Heermance, a New York attorney, testified concerning the matter before the Committee on Interstate and Foreign Commerce of the House of Representatives (Hearings, p. 85 *et seq.*). He declared that he represented the fur trade; that there were in that business many corporations organized in one or the other of the United States, but whose stockholders were either in largest part or wholly Germans; that those companies did business only in the United States and had no business dealings or communication with Germany, and that, therefore, he proposed an amendment to the bill which put their non-enemy status beyond doubt. This amend-

ment Mr. Assistant Attorney-General Warren opposed as "*absolutely unnecessary and inadvisable*". On June 4, 1917, he wrote Mr. Adamson, the chairman of the House Committee, as follows (Hearings, pp. 96-7):

> "The question has been presented to me whether the bill as now drafted prevents the doing of business by an American corporation which is controlled by German enemy stockholders residing in Germany. In reply to this, I desire to say that the bill does not concern itself in any way with the stock-ownership of American corporations. If the corporation is itself doing a lawful business, that business is not made unlawful by the bill simply because the stockholders of the corporation happen to be enemies within the definition of that term in the bill. In other words, it has been my express purpose in drafting this bill not to go behind the charter or corporate entity of an American corporation. Of course, if an American corporation attempts to transmit dividends to its foreign enemy stockholders, it will be doing an act which is prohibited by the bill. It is intended in this bill to avoid all the confusion and difficulties which have arisen in England by the attempt on the part of the courts to go behind the corporate charter and corporate entity. See *Continental Tyre & Rubber Co., Ltd.*, v. *Daimler Co., Ltd.*, (1915) 1 K. B. 893; *Daimler Co., Ltd.* v. *Continental Tyre & Rubber Co., Ltd.*, (1916 House of Lords) 2 A. C. 307."

Thereafter Mr. Warren explained his views as follows to the sub-committee of the Committee on Commerce of the Senate (Hearings, 65th Congress, 1st session, on H. R. 4960, Part I, p. 189):

> "The only other letter [which I have had] is by Mr. Clayton J. Heermance, an attorney of New York, who came up to see me at my office, and who appeared before the House Committee, and

whose testimony you will find printed there at length. His point is this: He claims that the bill as now drawn makes it unlawful for any American corporation to do business if that American corporation has German stockholders, because, he says, the corporation is thereby doing business indirectly for the benefit of an enemy, and he thinks that the bill therefore renders the business unlawful.

"I informed him that I could not in any way see the point; that we had specifically abstained in the bill from attempting to go beyond the corporate charter. If the corporation is an American corporation, then it can do business in this country. It cannot do an unlawful business any more than an individual can, but it is not an 'enemy', no matter how many German stockholders it may have, because the corporation is a corporate body, doing business for itself. When the dividends are declared it may not remit its dividends to its various stockholders; but by doing business in this country it is not doing business for the benefit of an enemy, it is doing business for the benefit of itself. . .

"In England they attempted to go behind the charter of an English corporation, and they attempted to hold that an English corporation which was controlled by German stockholders, was an enemy within the purview of their act, and they landed in inextricable confusion. I have cited a case in the House of Lords which leaves the whole subject in England in an entirely unsatisfactory condition. Here we have solved that by saying we will not go behind the corporate charter, no matter how many German stockholders there may be, and I think that is a wise policy to adopt.

"Senator Vardaman: I can not understand the advantage to be derived by this Government going behind a corporation because whatever money is made by it [the corporation], whatever profits are made in it, they are retained here until after the war.

Mr. Warren: They must be retained.

> "Senator Vardaman: They must be retained, and you could not destroy that company or hamper it in any way without interfering materially with the interests of the American stockholders.
>
> "Mr. Warren: Yes, so that the amendment which Mr. Heermance suggests and which is contained in his letter seems to be absolutely unnecessary and inadvisable."

These views commended themselves to the Senate Committee having the bill in charge. Accordingly, they adopted them in their report to the Senate (Report No. 113, 65th Congress, 1st session), saying (p. 4):

> "A corporation chartered in the United States does not come within the purview of the term 'enemy', even if controlled by German stockholders; but such corporation may not transmit dividends or profits out of the United States to its German stockholders and is criminally liable, just as any other citizen of the United States may be, for engaging in an act of trade with the enemy made illegal by the act" (Hearings, p. 189).

It is, of course, well-established law that the report of a legislative committee in charge of a bill is entitled to consideration when the purpose, policy, intent, meaning, or effect of the statute are in question. *Duplex Co.* v. *Deering*, 254 U. S. 445, 474-5; *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318.

C.

Further evidence of the understanding and intent of Congress.

But there is further conclusive proof that Congress purposely rejected the contention now put forward by the defendants. Not only do the letters of the drafts-

man, the hearings before the committee, and the report of the committee, clearly show that Congress declined to adopt the "stock control" theory in enacting the original Trading with the Enemy Act, but in 1918 Congress was asked to amend the Act so as specifically to embody that theory, and Congress refused to do so.

The records of Congress show that on June 4, 1918, both Mr. A. Mitchell Palmer, then the Alien Property Custodian, and Mr. Lee C. Bradley, his general counsel, appeared before the Committee on Interstate and Foreign Commerce of the House of Representatives in support of certain proposed amendments to the Trading with the Enemy Act. These were in large part embodied in the bill then before the committee (H. R. 12338, 65th Congress, 2nd session), and they, as well as other changes, were at this hearing being urged upon Congress by the Alien Property Custodian and his general counsel. The following is an excerpt from the hearing referred to (p. 36):

> "*The Chairman.* Now what is the next [amendment of the Act which you advocate], Mr. Bradley?
>
> "*Mr. Bradley.* Subsection (d), near the bottom of page 49, [which] is copied from the English act. It reads:
>
> "'(d) The Alien Property Custodian shall have power to appoint a managing agent or the district court of the United States for the district within which the property hereinafter specified or the major portion thereof may be located, upon the application of the Alien Property Custodian shall have power to appoint a receiver, who shall under such restrictions and conditions as the Alien Property Custodian or district court, respectively, may from time to time prescribe, receive, hold,

carry on, conduct, manage, liquidate, pledge, mortgage, or sell the property of any person, firm, *corporation*, or association *owned or controlled*, directly or indirectly, by, for, in behalf of, for the benefit of, or in the interest of an enemy or ally of enemy, or any interest of an enemy or ally of enemy in any property, firm, corporation, or association.'

"*That goes much further than any other provision of the trading with the enemy act, in that it would authorize the seizure and the ultimate disposition of the entirety of a property which was controlled by the enemy, although he might not be the complete owner of it.*

"*Mr. DeWalt.* How does that compare with the provision that you had in the amendment to the deficiency bill [*i. e.*, the amendment of March 28, 1918]?

"*Mr. Bradley. There was nothing at all in that about this. That just authorizes the sale of what belonged to the enemy.*"

The court will observe that in advocating the passage of the above quoted proposed amendment to the Act, the Alien Property Custodian and his counsel were urging upon Congress precisely what the defendants are now arguing for in this court. They desired and were urging that a corporation a majority of whose stock was German owned should be subject to seizure and sale as though it were an enemy, regardless of the rights and the non-enemy character of the minority stockholders. *But the significant fact is that Congress refused to enact any such amendment*, and, as the court will note, it is not now any part of the statute.

Yet the defendants' contention and the ruling below in effect are that the court, nevertheless, may read into the Act such a provision under the guise of construing

it and of discovering and enforcing the will of Congress. The courts, it is submitted, have repeatedly refused to lend themselves to any such method of administering statutes. *Carey* v. *Donohue*, 240 U. S. 430, 436-7; *Pennsylvania R. R. Co.* v. *International Coal Co.*, 230 U. S. 184, 198; *United States* v. *United Shoe Machinery Co.*, 264 Fed. 138, 142, 174, dismissed 254 U. S. 666; *McDonald & Johnson* v. *Southern Express Co.*, 134 Fed. 282, 288. In the *Carey* case (*supra*) this court said (240 U. S. at p. 437):

> "We cannot but regard the action of Congress as a deliberate refusal to conform the requirements of sec. 60 to those of section 3 b and we are not at liberty to supply by construction what Congress has clearly shown its intention to omit."

And in the *Pennsylvania R. R. Co.* case (*supra*) it declared (230 U. S. at p. 198) that:

> "The fact that this provision measuring the amount of recovery by rebate was omitted from the Act, as finally reported to both Houses and passed, is not only significant, but . . . conclusive against the contention of the plaintiff."

See also a forceful statement of the rule in *McDonald & Johnson* v. *Southern Express Co.*, 134 Fed. 282, 288.

D.

Practical interpretation.

The interpretation placed upon the Act by Mr. Assistant Attorney-General Warren and Congress subsequently received the approval of the Attorney-General

and of the counsel for the Alien Property Custodian. At the next session of Congress (65th Congress, 2nd session), Mr. Lee C. Bradley, general counsel to the Alien Property Custodian, appeared before the Committee on Interstate and Foreign Commerce of the House of Representatives in connection with a proposed amendment to the Trading with the Enemy Act (H. R. 12338), and stated that (Hearings, p. 24)—

> "The American corporation is never an enemy. The status of the Alien Property Custodian in respect of the American corporation is that merely of a stockholder. What he does when he seizes the enemy stock is to demand representation on its board of directors."

On July 18, 1918, the Acting Attorney-General, Mr. John W. Davis, rendered an opinion upon the subject to the Alien Property Custodian. The latter had inquired as to his right to act against an American corporation which was the owner of a patent and a majority of whose stockholders were Germans. If such a corporation were an "enemy", he could seize all its property, including the patent; otherwise he could take only the stock interest of the German stockholders but not the patent which belonged to the corporation itself. The Acting Attorney-General distinctly ruled against this attempt to condemn such a corporation as an "enemy" and capture its corporate property, and held that—

> "The meaning of the word 'enemy' as used in this Act is defined in section 2. That part of the definition which deals with corporations is as follows:
>
> " 'Any corporation incorporated within such territory of any nation with which the United States is at war, or incorporated within any coun-

> try other than the United States and doing business within such territory.'
>
> *"I am of the opinion that this enumeration of enemy corporations was intended to be exhaustive* and that under no circumstances can an American corporation be held to be an enemy within the meaning of this Act."

The executive construction thus placed upon the Act is entitled to weight. *Logan* v. *Davis*, 233 U. S. 613, 627; *Kern River Co.* v. *United States*, 257 U. S. 138, 154.

E.

General considerations.

It cannot reasonably be doubted that Congress deliberately and upon the fullest consideration refused to treat as an "enemy", under the war legislation now in question, any American corporation doing business in the United States, even though many or all of its stockholders might be Germans. Congress was undoubtedly of the belief that with the business of such a corporation adding to our commerce and wealth, and its agents here and within our reach and power to capture, if necessary, nothing more was needed for the national protection. The situation, in respect of allied or neutral corporations doing business in the United States and not in enemy territory and having a similar constituency of stockholders, is substantially the same. In the one instance as in the other, the business is here and helps to swell our commerce and wealth, and those in control of the beneficial interests of the German stockholders are likewise within the reach and power of the United States to capture, if necessary.

It is submitted that if the character of the stock control of any corporation had appeared to Congress to be important or decisive in the case of any corporation—American, allied or neutral—Congress would not have left that important matter in doubt or the subject of uncertain inferences, but would have plainly and unequivocally so provided, and not have limited the criteria of enemy character, as it indisputably did in section 2 of the Act, solely and exclusively to (1) residence in enemy territory, (2) incorporation therein, and (3) the doing of business there. With the *Daimler* case and the British and French rules before it, with the controversy, at least in some of its aspects, sharply called to its attention, that consideration would not have been passed over in silence in the Act, if it had been intended that it should have any force and effect at all. Congress, it is submitted, left the language of the statute what it is, because it intended when the Act was originally passed, and it has steadily maintained its intention, not to make the personnel of the stockholders any test of enemy status in respect of *any* corporation whatever.

Not only is the alleged intent of Congress to convert a corporation into an "enemy" because most of its stock was owned by Germans, contradicted by the statutory definition, the legislative history and executive construction of the Act, but it is also wholly inconsistent with the other provisions of the Act and with its general plan. It is, of course, the duty of courts to adopt that construction of a statute which will harmonize and not confuse or render inconsistent, the various portions and the general scheme of a law. *United States* v. *Landram*, 118

U. S. 81, 85; *A. Bryant Co. v. N. Y. Steam Fitting Co.*, 235 U. S. 327, 337; *Market Co. v. Hoffman*, 101 U. S. 112, 116. It is unnecessary to point out all the portions of the Act which are in conflict with the contention that the enemy personnel of the majority stockholders is the determinative element, or indeed any criterion at all, in arriving at the true nature of a neutral or domestic corporation as an "enemy" or non-enemy within the meaning of the Act. References to a few of them should suffice.

Thus, subsection b of section 8 provides that—

> "Any contract entered into prior to the beginning of the war between any citizen of the United States or any corporation organized within the United States, and an enemy or ally of an enemy, the terms of which provide for the delivery, during or after any war in which a present enemy or ally of enemy nation has been or is now engaged, of anything produced, mined or manufactured in the United States, may be abrogated by such citizen or corporation by serving thirty days' notice in writing upon the Alien Property Custodian of his or its election to abrogate such contract."

If, therefore, a corporation of American, neutral, or allied nationality and origin, but with a majority of its stock held by Germans, is to be deemed an "enemy", it necessarily follows that, although it be engaged in business wholly within the United States, and even although its activities might in the highest degree be beneficial to the United States and, indeed, to the Government itself, nevertheless, practically all, if not all, of its contracts for the purchase or sale of goods may be abrogated at will by the other parties thereto, notwithstanding the con-

sequences of economic dislocation which that course is reasonably certain to entail, not only to the corporation itself, but to its American employees, customers and others dependent upon it, and to business in general. It is believed that no such policy was intended by Congress to be embodied in the statute.

The fallacy of treating an American or French corporation with a German majority of stockholders as an "enemy" when its place of business is in the United States and it does not do business in any enemy country, is further evident when it is recalled that a German individual, resident and doing business here, is not deemed an "enemy" at all under the Act, and that his contracts and business are not interfered with thereby. Nevertheless, everything which can be said in favor of regarding him as not an "enemy" obtains with at least equal force in the case of such a corporation. Neither is doing business in the enemy territory; in fact, each is aiding and enhancing American commerce and business. Indeed, the German citizen may well be regarded as having more of an enemy character than any American or French corporation whose stockholders are only in part German and none of whose business or property is in Germany.

The gravity of some of the consequences of treating such a corporation as an "enemy" may be mentioned. The country in which a corporation is organized, of course, is interested therein. In the first place, such a corporation is one of its citizens, or nationals, or quasi-subjects*; in the next place, it is almost invariably a

* Moore's Digest of International Law, Vol. VI, pp. 641-6.

potential or actual source of revenue; and, finally, it may have, and frequently does have, the moneys of individual citizens of that country invested in the enterprise. For the United States to seize the property of such a corporation, wind up its business and liquidate the concern, may, therefore, quite plainly be an act inimical and prejudicial to the interests of the neutral or allied and friendly nation in question, and obviously might create a situation fraught with the possibility of serious international complications and dangers. Nothing can be clearer, it is submitted, than that Congress never could have contemplated any such outcome. Treaty obligations with friendly or allied powers would probably be jeopardized thereby, and only the clearest and most imperative language in an enactment should be sufficient to accomplish such result. *In re Chin A On,* 18 Fed. 506, 507; *United States* v. *Forty-three Gallons of Whiskey,* 108 U. S. 491, 496. Unnecessary difficulties in our diplomatic relations with practically every friendly nation would be consequent upon such a view. Certainly it is not reasonable to believe that the Department of State, which collaborated in the drafting of the Trading with the Enemy Act, could have had any purpose thus to involve the national interest, peace and safety, and aggravate the delicate international situation obtaining during the war.

The primary object of the Trading with the Enemy Act was to take control of enemy interests in this country. But it was not desired or intended to take or interfere with American, allied, or neutral rights and interests. *Mayer* v. *Garvan,* 278 Fed. 27, 35, affirming 270

Fed. 229, 239; *Simon* v. *Miller*, 298 Fed. 520, 524. It is manifest, however, that the seizure and liquidation of an American, allied, or neutral corporation simply because a majority of its stock was owned by Germans, would be an interference with the rights and property of citizens of the United States, or of our associated powers, or of friendly and neutral nations, as the case might be, who were in the minority in such corporation. So far as they are concerned, the interference with their business partakes of the nature of a wrongful confiscation, for it puts their venture to forced sale and compels them, in effect, to sell their interest therein against their will.

Any such interposition of governmental power is not only unjust in that sense, but is unnecessary as well. To accomplish its purpose the Government need not take the entire corporation; all it in fact requires, and all it ought of right to have or take, is the enemy interest. That it can reach by seizing the stock certificates for the shares of the Germans, or by taking over their beneficial interest in the corporation (sec. 7 of the Trading with the Enemy Act as amended November 4, 1918, c. 201, 40 Stat. 1020, 1021). If it had been intended to reach the enemy interest in such cases by condemning the entire corporation and the interests of all its stockholders regardless of their separate rights and nationalities, the amendment of 1918 above referred to would not have taken the form it did; it would have unambiguously denounced such corporations as enemies. That it would not have won the assent of Congress in that form, seems clear from the refusal of Congress to pass such an act in the summer of 1918, as we have seen. Certainly that amendment and

the prior action of Congress, make it more than ever improper to attempt, by construction, to read into the Act a proscription of all corporations doing business in our country, but which, although incorporated here or in allied or neutral countries, have a majority of their stock owned or controlled by enemies, and to arrive at such a construction in spite of the harm to innocent and friendly individuals which it inevitably involves. It is the legitimate function of construction to avoid, and not to create hardship, injustice and oppression. *Knowlton* v. *Moore,* 178 U. S. 41, 77; *United States* v. *Kirby,* 7 Wall. 482, 486; *United States* v. *Heth,* 3 Cranch 399, 409.

There is nothing in the suggestion that such corporations afford a means for evading the policy of the Trading with the Enemy Act. It has been suggested that money received by a Swiss corporation might be sent to Switzerland and there in part sent or distributed to Germans. The argument could not reasonably apply to a British corporation like the plaintiff. But in any event, it is clear that the Act makes criminal such conduct and otherwise abundantly provides against any such device.

In the first place, such an agreement to circumvent the Trading with the Enemy Act as the defendants have conjectured, would plainly constitute a conspiracy to defraud the United States and to commit an offense against it, and all who helped to further it in the United States would be guilty of the felony denounced in section 37 of the Federal Criminal Code. Again, section 3 of the Act makes it unlawful and criminal for any person to trade or attempt to trade with or for the benefit of an enemy, directly or indirectly; and the words "to trade" as used

in the Act are so broadly defined in section 2 as to embrace every step in the conduct of any business transaction. Section 5-a of the Act, moreover, grants the President power to stay any threatened violations of the Act.

Finally, section 7-c confers upon the Alien Property Custodian unfettered power to seize the interests of every enemy stockholder in such a corporation. Thus, that section as originally enacted provided for the seizure of "any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy," and the amendment of November 4, 1918, further emphasized and enlarged this grant of power by adding thereto the power to seize "choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy," including all "shares of stock or other beneficial interest in *any* corporation," etc.

These provisions of the Act obviously empowered the Alien Property Custodian to seize any and every kind of interest owned, or held for, or of any benefit to, an "enemy". The methods whereby the Alien Property Custodian was to execute and carry into effect this grant of power are made clear in the Act and are well known. It was the duty of any one who had enemy rights and claims in his possession or control to report the fact and the Alien Property Custodian had only to serve upon the person who had the business, property, or interest in charge a demand that the latter turn over to the Alien Property Custodian every right, title and interest of the

enemy (sec. 7-c as amended Nov. 4, 1918). On receipt of such demand, it at once became the duty of the person so served to comply therewith (*id.*), and ample power was conferred upon the District Courts of the United States to compel such obedience and to do whatever was needful to place into the hands of the Alien Property Custodian the subject-matter of his seizure (sec. 17).

These express provisions of the Act answer the question asked by the defendants in the courts below, as to how the Alien Property Custodian could seize the interests of enemies in foreign corporations whose business and property were here. He could make such interests his own by his demand; he could compel the persons in charge of the corporate business and property to see to it that what he had thus demanded was made over to him; and, finally, he could invoke all the powers of the Federal Courts—injunction, accounting, receivership, etc. —to effectuate his demand. Under those circumstances, it is not difficult to understand why Congress, as we have seen above, refused to go further and empower the Custodian to seize also friendly, allied and neutral interests in a corporation where there happened to be enemy stockholders.

If, however, it were the fact that the machinery provided in the Act was inadequate to accomplish the seizure of an enemy's stock interest in an allied or neutral corporation doing business in the United States, that circumstance would be wholly immaterial. Such a *casus omissus* might have been intentional with Congress. The relative unimportance of the matter and the serious practical difficulties involved in making seizures in such

cases, as well as the unjust consequences to our own citizens and allies and neutrals, which are adverted to herein, might well have seemed to Congress to outweigh the slight advantage to the nation to be derived from such seizures.

Moreover, it is to be noted that a German individual citizen resident and doing business here and who is not declared to be an "enemy" by the statute, has the same potentiality for illicit evasion of the Act as have neutral corporations. He may send money to Switzerland and the recipient thereof, conniving with him, may transmit it to Germany. Nevertheless, it cannot be seriously contended that, despite the fact that the statute does not class such individuals as enemies, the courts ought none the less to hold *all* resident Germans to be enemies within the meaning of the Trading with the Enemy Act, because of the possibility that *some* of them may misbehave. Such a general condemnation of the innocent and the guilty is not to be tolerated.

But even if we assume that the Act does not furnish adequate machinery for the seizure of the interests of enemy stockholders in foreign corporations, that cannot justify a holding by the court that, therefore, all such corporations must be deemed "enemies", notwithstanding the fact that they are not organized in or doing business in any enemy country, and thus are not embraced within any of the definitions of "enemy" laid down in the Act. The statute being plain, nothing may be read into it by judicial construction. Even if the Act omit something which one may now believe it would have been desirable to include, that clearly is not a proper

ground for adding to a plain and unambiguous enactment. The rule of law in this aspect was stated by Mr. Justice Brewer in *United States* v. *Goldenberg*, 168 U. S. 95, 102-3, as follows:

> "The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. *No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute.* In the case at bar the omission to make specific provision for the time of payment does not offend the moral sense; *Holy Trinity Church* v. *United States*, 143 U. S. 457; it involves no injustice, oppression or absurdity, *United States* v. *Kirby*, 7 Wall. 482; *McKee* v. *United States*, 164 U. S. 287; there is no overwhelming necessity for applying in the one clause the same limitation of time which is provided in the other. *Non constat* but that Congress believed it had sufficiently provided for payment by other legislation in reference to retaining possession until payment or security therefor; or that it failed to appreciate the advantages which counsel insists will inure to the importer in case payment does not equally with protest follow within ten days from the action of the collector; or that, appreciating fully those advantages, it was not unwilling that he should enjoy them. Certainly, there is nothing which imperatively requires the court to supply an omission in the statute, or to

> hold that Congress must have intended to do that which it has failed to do. Under these circumstances, all that can be determined is that Congress has not specifically provided that payment shall be made within ten days as one of the conditions of challenging the action of the collector, and hence there is no warrant for enforcing any such condition."

The serious consequences to our own loyal citizens which lurk in the contentions of the defendants should also be appreciated. The Act prohibits and makes criminal trading with an enemy. But if domestic, allied and neutral corporations doing businss here and not in enemy territory are to be classified as enemies whenever a majority of their stock is enemy-owned, an extremely onerous burden is laid upon business men. They must then ascertain before they can safely do business with any corporation, not only where it is incorporated, but who in fact owns or controls a majority of the stock—a matter frequently difficult to discover. If they fail to make the inquiry, or, after making it, arrive at an erroneous result, they may be haled before a jury and compelled to defend against the serious criminal charge of trading with the enemy. It is too plain to warrant discussion that the business of the country could not be done if laid under such an oppressive burden and threat.

Nor is that the ultimate or logical end of the defendants' contention. Control of a corporation is often not with the majority of its stockholders. A compactly held, large block of stock, even though not as much as half of the total stock, is in many instances sufficient for corporate control where the rest of the stock is scattered and in many hands. Is such a corporation, even though

all of its business is done here, also to be deemed an "enemy" where the closely held minority happens to be German? Are business men to fear to deal with such an English or Swiss corporation, notwithstanding the fact that all of its dealings are in the United States? Is all the property and business of such a corporation liable to be seized by the Alien Property Custodian and disposed of at forced sale, despite the rights of the friendly or allied nation which incorporated the company and the rights of the majority who may be Americans, allies, or friendly neutrals? The unjust and impolitic consequences foreshadowed in these questions sufficiently mark the error of the theory which the defendants now advance.

For the foregoing reasons, it is submitted that the plaintiff corporation is not an "enemy" or "ally of enemy" within the meaning and intent of the Trading with the Enemy Act. Neither the express language of the Act nor the purpose of its framers makes it that. The alleged "public policy" to that end, which the defendants invoke, is not that of the statute; and it was long ago laid down that the courts can know no public policy but that contained in the Constitution and laws. *License Tax Cases,* 5 Wall. 462, 469.

In *Hadden* v. *The Collector,* 5 Wall. 107, 111, Mr. Justice Field said:

> "What is termed the policy of the government with reference to any particular legislation is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the court in the interpretation of statutes."

II.

THE PLAINTIFF CORPORATION IS ENTITLED TO SUE AND RECOVER UNDER SUBSECTION A OF SECTION 9 OF THE TRADING WITH THE ENEMY ACT.

If, as we have seen, the plaintiff corporation is not and was not an "enemy" or "ally of enemy" within the terms of the Trading with the Enemy Act, it was plainly erroneous for the Alien Property Custodian to determine otherwise, if he ever in fact made any such determination, and it was a distinct violation of its rights when the Custodian in February, 1918, seized its business as though it were enemy-owned property and thereafter caused it to be liquidated and, for all practical purposes, destroyed (p. 2). The charges of illegal determination of enemy character, wrongful seizure and sale in paragraph VIII of the bill (pp. 2-3) are, therefore, well-founded. Reason and justice would, consequently, seem to demand that the plaintiff corporation have a remedy for this violation of its legal and property rights. But it was the defendants' contention in the courts below that the plaintiff corporation is remediless because some of its stock (*and it would not matter how little*) was owned by Germans. The warrant for that argument the defendants profess to find in section 9-b (6) of the Act, as amended June 5, 1920 (c. 241, 41 Stat. 977). The section as amended is printed in full in the appendix hereto and in part quoted below.

Before examining the statutory language which, it is claimed, accomplishes this drastic result, it may be in-

structive to appreciate and have in mind some of the consequences which the defendants' contention would entail. It will at once be recalled that when the constitutionality of the Trading with the Enemy Act was challenged in *Central Union Trust Co.* v. *Garvan*, 254 U. S. 554, and *Stoehr* v. *Wallace*, 255 U. S. 239, 245, it was upheld because the court found in section 9 of the statute adequate provision for the restoration and recovery of property which had been mistakenly seized by the Alien Property Custodian as enemy-owned. Thus, in the last mentioned case, Mr. Justice Van Devanter said (255 U. S. at p. 245):

> "That Congress in time of war may authorize and provide for the seizure and sequestration through executive channels of property believed to be enemy-owned, if adequate provision be made for a return in case of mistake, is not debatable. *Central Union Trust Co.* v. *Garvan, supra.* . . . The present act commits the determination of [the question of enemy-ownership] to the President, or the representative through whom he acts, but it does not make his action final. On the contrary, it distinctly reserves to any claimant who is neither an enemy nor an ally of an enemy a right to assert and establish his claim by a suit in equity unembarrassed by the precedent executive determination. . . . Thus there is provision for the return of property mistakenly sequestered; and we have no hesitation in pronouncing it adequate, for it enables the claimant, as of right, to obtain a full hearing on his claim in a court having power to enforce it if found meritorious."

That was, indeed, the view which was urged by the Government and which prevailed in the courts from the beginning. It was so held by the Circuit Court of Ap-

peals for the Second Circuit in *Garvan* v. *$20,000 Bonds*, 265 Fed. 417, 419 (affirmed *sub nomine Central Trust Co.* v. *Garvan*, 254 U. S. 554), where Circuit Judge Ward said:

> "If persons not alien enemies, or allies of alien enemies, were given no means to protect their interests in such property the seizure would be unconstitutional as without due process of law; but they are given such remedies under section 9."*

If, however, the defendants be right in the interpretation which they now place upon section 9 as amended, then it is apparent that at least grave doubt must arise as to the constitutionality of the amended act in such cases at that at bar. The plaintiff corporation, as we have seen, is neither an "enemy" nor "ally of enemy", but, nevertheless, it has, the defendants assert, no right to recover back its property which was wrongfully and mistakenly seized and sequestered as enemy-owned. Yet this court has sustained the Act only because it was convinced—and that, too, on the argument of the Government itself—that the statute "distinctly reserves to any claimant who is neither an enemy nor an ally of an enemy a right to assert and establish his claim by a suit in equity unembarrassed by the precedent executive determination" of enemy ownership. The argument of the defendants in the case at bar, however, attempts absolutely to deny that right to the plaintiff, notwithstanding

* It was argued below by the defendants (brief, p. 27) that the doctrine of the foregoing decisions was limited to American citizens exclusively; in other words, that they alone were entitled to protection from the taking of property without due process of law. Of course that contention was quite frivolous. The protection of the Fifth Amendment extends to every "person" and not merely to citizens. *Wong Wing* v. *United States*, 163 U. S. 228, 238.

that it is not an "enemy" or "ally of enemy". If that be the necessary outcome of the amendment to the Act in 1920, if that be its proper construction, then it is submitted that it is plainly unconstitutional. The rule is well-settled, however, that it is the duty of the court to reject, if reasonably possible, a construction of a statute which would cast such a grave doubt upon its validity. *United States* v. *Delaware & Hudson Co.,* 213 U. S. 366, 407-8; *United States* v. *Bennett,* 232 U. S. 299, 303; *United States* v. *Jin Fuey Moy,* 241 U. S. 394, 401; *Texas* v. *E. Texas R. R. Co.,* 258 U. S. 204, 207; *Arkansas Gas Co.* v. *Railroad Comm.,* 261 U. S. 379, 383.

The defendants' interpretation leads also to unjust and impolitic results. Under it, for example, a British or French corporation whose property had been illegally and mistakenly seized as enemy-owned, would have no right to recover it if a German held even as little as a single share of its stock; and apparently, also, the same result would follow even if the Alien Property Custodian himself thereafter seized the German's share! Under this view, the enemy or non-enemy character of the corporation, as expressly defined in the Act, is, in truth, rendered utterly immaterial and all that really matters, for any practical purpose, is the fact that some enemy individual owns a share of stock therein. The contention of the defendants is equally disregardful of the rights of the friendly, neutral, or allied nation in which the company may have been incorporated, as well as of the rights of our own citizens or the nationals of neutral or allied countries who own the rest, and perhaps the great ma-

jority of the stock. The serious injustice to our own citizens and to friendly nationals in thus taking away and destroying by liquidation their business and investment, and the grave danger of involving the United States in unnecessary disputes with allied and neutral nations, must manifestly be accepted as inevitable under the defendants' construction of the amended statute.

The foregoing logical consequence of the defendants' contention entitle us to view with misgiving the construction which they urge, for it has frequently been remarked by the courts that "a bad result suggests a wrong construction." *People ex rel. Beaman* v. *Feitner,* 168 N. Y. 360, 366.

Prior to the amendments of June 5, 1920 (c. 241, 41 Stat. 977), and February 27, 1921 (c. 76, 41 Stat. 1147), to section 9 of the Trading with the Enemy Act (approved October 6, 1917, c. 106, 40 Stat. 411), it would have been too clear to be debatable that the plaintiff corporation, not being "an enemy or ally of enemy", would have been entitled to maintain its bill of complaint herein under section 9 of the Act. That section then provided in part as follows:

> "That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder and held by him or by the Treasurer of the United States . . . may file with the said Custodian a notice of his claim under oath and in such form and containing such particulars as the said Custodian shall require; and the President, if application is made therefor by the claimant, may order

> the payment, conveyance, transfer, assignment or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled. . . . If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six ["eighteen" when this suit was filed] months after the end of the war institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title or debt so claimed," etc.*

The foregoing provisions have never been altered in any respect. They still remain as subsection a of section 9 of this Act. It is manifest, therefore, that they still recognize or confer upon the plaintiff corporation, as a "person not an enemy or ally of enemy", the right to file a claim and sue for the return of any of its property which has been mistakenly taken by the Alien Property Custodian as enemy-owned. The applicability of the plain and unambiguous provisions of this subsection of the Act cannot be reasonably denied. But the defendants' claim is that the provisions added to section 9 by amendment have, in effect, so limited and qualified the other provisions of the Act as to convert the plaintiff

* This is section 9 as amended July 11, 1919 (c. 6, 41 Stat. 35).

corporation into an "enemy", and to withdraw from the plaintiff its former right to sue for and recover property wrongfully taken from it.

The rule of satutory construction in such a case was long ago declared by this court. In *Faw* v. *Marsteller,* 2 Cranch 10, 23-4, Chief Justice Marshall said in respect of a similar contention as follows:

> "It is admitted, in argument, by the counsel for the appellee, that the terms used in the first part of the section are such, that if they stood alone, they would include, in their letter, the case at bar: but it is contended, that there are subsequent words which limit those just quoted, so as to restrain their operation. . . . In searching for the literal construction of an act, it would seem to be generally true, that positive and explicit provisions, comprehending in terms a whole class of cases, are not to be restrained, by applying to those cases an implication drawn from subsequent words, unless that implication be very clear, necessary, and irresistible."

In the case at bar, however, the court will search the amendments to section 9 of the Act in vain for language which, by "clear, necessary and irresistible" intendment, reclassifies the plaintiff and converts it into an "enemy", or legalizes the original wrongful, if not outrageous, seizure of its property, or withdraws from the plaintiff the right theretofore existing to recover its property under the plain provisions of subsection a. All that, by any possibility, can be found in the amendment of June 5, 1920 (c. 241, 41 Stat. 977), is paragraph 6 of subsection b. Perusal of that paragraph will at once reveal to the court its obscure, inartificial and ungrammatical character; as well as the fact that it stands in subsection b in associa-

tion with seven other numbered paragraphs, each one of which plainly purports to relate—not to the rights of non-enemies, whose property was wrongfully taken, and which are comprehensively covered and regulated in subsection a—but solely to the rights of "enemies" whose property was lawfully seized. It has been said that—

> "The court could not think of letting the subsequent, incoherent and obscure phraseology of [a] latter clause of [a statute] control and substantially defeat the clear and explicit language of [a preceding] clause. . . . It is only when the subsequent clause of a statute has the combined advantage of equal clearness as well as position that it will control the former. It would be a poor rule to reject what is clear in order to give effect to what is obscure" (*State* v. *Williams,* 8 Ind. 191, 192).

Again, the court will not fail to observe the inherent improbability which underlies the defendants' contention. Not even the defendants have claimed that the original Act made stock ownership by one or even by a majority of enemy individuals any test of the enemy status of a corporation. Consequently, it is certainly amazing to discover that that result, if the defendants be right, came about only after the actual war was over and there had been virtual peace for nineteen months, and after Congress in actual war-time had deliberately refused to pass an amendment to that effect. It passes the bounds of reason to declare that such a corporation as the plaintiff was not an "enemy" and not remediless under the Act all through the trying days of fear and conflict, but that it first became an "enemy" and lost its right to relief for a clearly wrongful seizure only when

the war was over and under an amendment to the Act passed as remedial legislation for the return of property previously and rightfully seized from an entirely different class, namely, "enemies."

Consideration, moreover, of the reasons moving Congress to enact the amendments in question and of their terms will further emphasize the unfounded character of the defendants' assertions. The amendments of June, 1920, and February, 1921, were not intended to alter in any particular the statutory definitions of the terms "enemy" and "ally of enemy" contained in section 2. Perusal of the amendments will at once demonstrate that fact. They have no relation to those definitions and they are obviously not definitions in themselves. They were not enacted to increase or enlarge the number or classes of persons who were enemies or allies of enemies. On the contrary, the purpose of the amendments, enacted as they were long after the Armistice and during a period of virtual peace, was to alleviate some of the conditions of hardship and injustice which the original Act had brought about or which the strict war-time administration thereof had revealed. The purpose of the new provisions in subsection b was to increase, and not to diminish, the number of persons who could seek and obtain relief under the Act, by adding thereto classes of persons who had previously been regarded as enemies or allies of enemies under the Act, and not at all to withdraw the right to relief from persons theretofore entitled to file claims and sue because neither enemies nor allies of enemies. That, indeed, was repeatedly declared to Congress by the committees in charge of the amendatory

bills, by the Department of State and by the Attorney-General. Thus, in the report of June 2, 1920, to the House of Representatives by the Committee on Interstate and Foreign Commerce (66th Congress, 2nd session, Rep. 1089) it was stated in part as follows (pp. 2, 3):

> "The purpose of the above bill is to amend section 9 of the trading-with-the-enemy act so as to facilitate the return on the part of the Alien Property Custodian of money or other property conveyed, transferred, assigned, delivered, or paid to him or seized by him under the provisions of the above act. . . . In view of the fact that 19 months have elapsed since the signing of the armistice and during this period an actual state of peace has existed, there have been increasing demands for legislation asking for a return of property now being held by the Alien Property Custodian. This is true as to many women who were American citizens and who had married enemy aliens prior to our declaration of war April 6, 1917, and who were possessed of property not acquired directly or indirectly from any subject or citizen of Germany or Austria-Hungary.
>
> "Another class of claimants are interns who were taken from German merchant vessels and detained in internment camps in the United States. While most of these interns have returned to Germany about 100 of them have remained and will doubtless become citizens. The property thus taken over by the Alien Property Custodian belonging to them at the time of their internment amounted to approximately $2,000,000.
>
> "Another class consists of diplomatic or consular officers who were citizens or subjects of Germany or Austria or Hungary or Austria-Hungary at the time of the severance of diplomatic relations between the United States and such nations. In some instances their property was taken and is still being held by the Alien Property Custodian, notwithstanding that claims therefor have

> been made through diplomatic channels. . . . The reasons for the enactment of the pending measure are clearly set forth in the accompanying communications received from the Attorney-General and the Secretary of State. For the reasons set forth in the letter of the Secretary of State prompt and favorable action is urged in order that the State Department may be relieved of some embarrassment in its dealings with some countries of Europe."

One of the letters of the Attorney-General thus referred to and annexed to the foregoing report, contains the following (*id.* pp. 3-4):

> "The Secretary of State has written to me that this Government has recognized that the Provinces of Alsace and Lorraine have now become a part of France and that, in his opinion, the continued retention by the Alien Property Custodian of property of residents of these Provinces who have acquired French nationality under the Versailles treaty of peace cannot fail to have an unfavorable effect upon the relations of the United States and France. The Secretary of State expressed the view that the trading with the enemy act should be so amended as to allow the return of this property. He suggested that I recommend to Congress an amendment to this effect.
>
> "The Secretary of State also points out that this Government has recognized the Republics of Poland and Czechoslovakia and the Kingdom of the Serbs, Croats and Slovenes, and that for this Government to retain the property of persons who are citizens of those countries and resident within their borders would have a prejudicial effect upon the relations between the countries in question and the United States. The Secretary of State's recommendation was that any amendment to the trading with the enemy act should be broad enough to authorize the return of property belonging to citizens of these countries. He also felt that the amendment should cover the cases of residents in

territory which may be allotted, under treaties yet to become effective, to an allied or associated power (as, for example, Trieste), as well as territory which, under plebiscites to be held in accordance with treaty provisions, may be allotted to a neutral country (as, for example, that portion of Schleswig which may be allotted to Denmark).

"I am herewith forwarding you a draft of a bill to amend section 9 of the trading with the enemy act, which I believe will provide the relief requested by the Secretary of State. For your convenience, I shall briefly analyze its provisions and indicate the change which it would make in existing law.

"Section 9 has been divided into subsections. *Subsection (a) is identical with the present provisions of section 9 of the trading with the enemy act. It contains the same provisions for relief of any person not an 'enemy or ally of enemy' as those terms are used in that act.*

"The first portion of subsection (b) provides for the relief of citizens of allied countries resident in territory which was occupied during the war by the armed forces of the enemy. Relief was extended to this class of persons in the amendment of section 9 contained in the general deficiency appropriation act approved July 11, 1919. The phraseology has been changed slightly to provide relief in a small number of cases which have been thought not covered by the amendment of July 11, 1919. . . .

"Subsection (c) contains a new provision giving all those covered by subsection (b) the right to bring suit for their property in the manner provided for in subsection (a) which contains the original provisions of section 9.

"Subsections (d) and (e) contain the same general provisions relative to the effect of section 9 which were in section 9 as originally enacted."

It will at once be observed that the Attorney-General pointed out to Congress that subsection a of section 9

was identical with the pre-existing provisions of that section, and that "it contains the same provisions for relief of any person not an 'enemy or ally of enemy' as those terms are used in that act." In other words, there was no purpose or intent in his mind to re-define the statutory terms "enemy" and "ally of enemy" or to abridge the rights of any non-enemy who would have been entitled to the return of property under section 9 as it stood prior to amendment.

A subsequent letter of the Attorney-General, also annexed to the House committee's report (*id.* p. 6), contains the following:

> "Subsection (b) of the proposed amendment [to section 9] provides, in substance, for the return of all *enemy* property, except that held by persons who are in fact *bona fide* subjects or citizens of Germany, Austria, or Hungary."

The court will remark that the Attorney-General in this letter clearly expressed the belief that subsection b would affect and relieve only "enemies". As he stated, its purpose was to deal solely with "enemy property". The idea that subsection b was also intended to restrict non-enemies is not even suggested in his letters to Congress; and there is every reason to presume that, if he had then held any such opinion, he would not have failed to impart that fact to Congress.

On May 5, 1920, the Secretary of State wrote the Attorney-General in part as follows in reference to the proposed amendment to section 9 of the Act (*id.* p. 5):

> "The various neutral and allied States whose nationals' property has been taken over by the Alien Property Custodian by reason of their resi-

dence in enemy or ally of enemy territory, or otherwise, for some time have been pressing for the release of such property. It appears that the Department of Justice has ruled that, under the Trading with the Enemy Act in its present form, it is not in a position to release this property. During the actual conduct of hostilities it may have been advisable to retain such property. In view, however, of the cessation of hostilities, this department feels that the Government should no longer retain this property, even though a technical state of war may exist. To do so would undoubtedly create an unfavorable impression in the States concerned, and would be of no advantage to the United States in its negotiations with enemy countries."

The following extract from a letter of the Secretary of State to the chairman of the House committee in charge of the bill also throws light upon the purpose which the amendatory legislation was intended to accomplish. The letter reads in part thus (*id.* p. 7):

> "The Attorney General has informed me that on May 11, 1920, he submitted to you a draft of an amendment to section 9 of the trading with the enemy act, permitting the return of property taken over by the Alien Property Custodian belonging to citizens or subjects of neutral states, and states associated with this Government in the World War, as well as to persons who have or will, in pursuance of treaty provisions, become citizens or subjects of such states, for example, Alsace-Lorraine, or citizens or subjects of new states which have been recognized by this Government, such as Poland and Czechoslovakia.
>
> "The draft, it is understood, is largely based on representations from this department, made in view of the fact that the Attorney General holds that under the trading with the enemy act in its present form, he is unable to release property to

> owners, who when it was taken over were included, for any reason, in the terms 'enemy' or 'ally of enemy' as used in the act and consequently in spite of strong representations by various neutral and associated governments, it has been impossible to return the property of their nationals, which it would appear this Government should no longer retain. To longer retain property of this character can hardly fail to unfavorably affect the relations of this Government with the Governments concerned, and I am strongly of the opinion that section 9 of the act should be amended at an early date, so as to permit in proper cases the return of such property."

It is submitted that this letter, like that of the Attorney-General, was written in the belief that the draft bill in question would relieve persons theretofore classified as "enemies" or "allies of enemies" under the Act, and not cut down the remedies or rights of those who were not then and never had been classified as "enemies" or "allies of enemies" in the Act.

In the Senate Senator Lodge explained the bill by saying (66th Congress, 2nd session, 58 Cong. Rec., pt. 8, p. 8473)—

> "The main purpose of the bill which has been very carefully prepared by the State Department and the Department of Justice and to which the House has given a great deal of attention, and our Committee on the Judiciary, is to return money seized as of alien enemies to the people who are really not alien enemies or technically so." *

The Alien Property Custodian testifying before the House committee with reference to kindred bills (H. R.

* A similar statement was made to the Senate by Senator Brandegee of the Judiciary Committee.

12651 and 12884), made the following suggestion (Hearings, March 23, April 2nd and 27th, 1920, p. 4):

> "Mr. Garvan. The main [suggestion I have to make] is to have the bill conform to section 9 of the present act. Under the present act non-enemies are able to reclaim their property under section 9. That has built up a procedure and rulings; forms have been decided upon and tested by a long series of claims. The expense to the Government would be much less and it would be much simpler to administer . . . if this act just extended the number of persons who could claim under present section 9. Then it would allow them to be considered just as United States citizens returning to this country now are considered; so that if you do decide to return this property I think that just enlarging the definition of the people who could claim under section 9 would much more easily and simply accomplish your purpose."

It must thus be manifest that the draftsmen of the amendatory statutes accepted the Alien Property Custodian's advice, and that they intended merely to enlarge the class of persons who could claim under section 9, and not to restrict it. No one then made any suggestion that certain classes of non-enemy claimants be excluded from relief; and, indeed, the contention has never been put forward, so far as we can ascertain, until recently.

To accomplish the remedial purpose declared in the documents above referred to, Congress added subsection b to section 9. That subsection contained various new provisions. These provisions did not, however, purport to alter in any respect subsection a, which, as theretofore, authorized the President, but only upon application by persons not enemies or allies thereof, to return

seized property or its proceeds. The new provision now granted to the President additional power to order the return of property or its proceeds, "without any application being made therefor" in certain cases of *enemy* persons. Thus, where the seizure had *rightfully* taken or affected the rights of (1) a neutral, or (2) a neutral woman married to a German or Austrian, or (3) an American woman married to a German or Austrian, or (4) an enemy diplomat, or (5) an interned enemy, or (6) a corporation or partnership entirely owned by others than Germans, Austrians or Hungarians, or (7) the governments of Bulgaria or Turkey, or (8) the governments of Germany, Austria or Hungary in so far as their diplomatic property was concerned, etc., the amendments empowered the President to grant relief, not alone where application had been duly made as prescribed in subsection a, and not only to the individuals in that subsection mentioned, namely, "persons not enemy or ally of enemy", but even "without any application being made therefor" at all, and to all those classes of individuals—*in addition to those enumerated in subsection a* —who, although enemies, were now specified in the new provisions. In other words, subsection a was not in any respect affected, restricted, or limited in its scope and effect by the new subsection b.

The only provisions of subsections b and c of section 9 which have any bearing in the case at bar are as follows:

> "(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of

the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was . . .

"(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria, or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; . . .

"then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered or paid over to the Alien Property Custodian.

"(c) Any person whose property the President is authorized to return under the provisions of subsection (b) hereof may file notice of claim for the return of such property as provided in subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such property, as provided in said subsection, and with like effect."

There is in the foregoing provisions no language which either expressly or by reasonable implication can be deemed to alter the definition of the terms "enemy" and "ally of the enemy" in section 2, nor any language

which either expressly or by reasonable implication can be regarded as limiting or abridging the force and effect of subsection a of section 9. Subsection a still regulates and controls, as it did before, the right of "any person not an enemy or ally of enemy" to make a claim or bring suit for property wrongfully or mistakenly seized as enemy-owned. Subsection b now regulates and controls the right of certain enumerated classes of persons (including corporations incorporated or doing business in enemy territory), theretofore defined as "enemies" or "allies of enemies", to make claims and bring suit for property rightfully and lawfully seized as enemy-owned. Each of the two subsections, therefore, has its own proper field of operation and neither is a limitation upon the other.

There is nothing in the language of paragraph 6 of subsection b to indicate that it was creating a condition precedent or limitation upon subsection a, any more than there is in the language of any of the other paragraphs of subsection b, and the suggestion that these latter constitute such conditions or limitations should be rejected as wholly unwarranted.

The defendants, however, declare that this limiting and repressive intent is evidenced by the provisions of subsection e of section 9. Analysis of that portion of the section, however, will at once disclose the contrary. Thus, the first clause of subsection e provides that—

> "No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like

> case extends reciprocal rights to citizens of the United States."

It must be manifest that the purpose of the foregoing clause is further to relieve and benefit citizens of the United States by compelling our allies to do at least as much for our citizens as we are now doing for theirs. It would have been unwise for the United States to relieve from a prior lawful seizure of property, let us say, a British subject who had but recently ceased to live in Germany, if Great Britain in a similar case did not do as much for American citizens. It was plainly appropriate for Congress to provide in a statute liberalizing the administration of the Act largely for the benefit of subjects of our allies, that the same measure of justice and relief as the United States was granting to their subjects should be accorded by the allies to our people. Such legislative action would tend to induce similar actions by our allies; and it was, therefore, well calculated to win a larger measure of relief than had theretofore been available to war sufferers the world over. There is nothing repressive in such legislative action; and certainly nothing from which to infer that Congress intended subsection a of section 9, which affected non-enemies, to be restricted by all the terms and conditions to be found in subsection b, which affected only "enemies" and their allies.

The other provisions in subsection e are equally without significance in the case at bar. The second clause provides:

> "Nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917,"

which is the date when the Trading with the Enemy Act was approved. The purpose of this provision was clearly to prevent the dissipation of moneys in the hands of the Alien Property Custodian because of the payment of debts created by the Germans after the seizure of their property. The right of the Alien Property Custodian to seize property would have been practically worthless if after the seizure the "enemy" could still utilize the sequestered property to pay his subsequently incurred debts to neutrals. A similar intention to preserve enemy property, duly taken and sequestered by the Alien Property Custodian, from being utilized to pay unrelated claims of foreigners to the prejudice perhaps of American claimants and the United States, underlies the final provision of subsection e that "as to claimants other than citizens of the United States [no debt should be allowed] unless it arose with reference to the money or other property held by the Alien Property Custodian."

It should also be pointed out to the court that, in fact, these provisions of subsection e were not intended to change the pre-existing law at all. So it was distinctly testified before the Committee on Interstate and Foreign Commerce of the House of Representatives by Mr. Lucien H. Boggs, the assistant to the Attorney-General, who had the amendatory bill (H. R. 14208) in charge (Hearings, 66th Congress, 2nd session, May 25, 1920, pp. 19-20). He summarized his statement on this point as follows (*id.*, p. 20):

> "This section [that is, subsection e of section 9] is merely declaratory of the interpretation that the department put upon it [that is, the Act as unamended]."

As further showing that the amendment of June 5th, 1920, was not intended to be a restriction of the plain wording of section 9-a, it is to be observed that subsection c, which the defendants claim bars the plaintiff from its remedy, contains a blanket incorporation of the remedy provided in section 9-a as follows:

> "Any person whose property the President is authorized to return under the provisions of subsection b hereof may file notice of claim for the return of such property as provided in subsection a hereof, and thereafter may make application to the President for allowance of such claim and/or may institute a suit in equity to recover such property as provided in said subsection and with like effect."

This language plainly enacted the suggestion of the Alien Property Custodian, referred to above, that the amendment "just extend the number of persons who could claim under present section 9." It is not reasonable to assume that the very same subsection which adopts all the procedural provisions of subsection a was intended to restrict and limit those for whose benefit the procedure is and was primarily provided. The defendants contend that subsection c should be construed as though it read: "*Only* a person whose property the President is authorized to return under the provisions of subsection b hereof may file notice of claim," etc. But no words implying that meaning are found in the amendment. On the contrary, subsection a with its plain and unmistakable language was expressly reënacted at the same time that subsection c was adopted.

Another clear indication that subsection a should be construed as unaffected by subsections b and c is found

in the case of *Nortz* v. *Miller*, 285 Fed. 778, affirmed *id.* 781. There a citizen of Germany resident in the United States sued under section 9 to recover a debt out of property seized by the Alien Property Custodian. Recovery was denied because the debt did not arise with reference to the property seized; but it was nowhere suggested that the plaintiff had no legal right to institute the suit. Yet he came within none of the paragraphs of subsection b but only within subsection a. Hence under the defendants' argument in this case, he should have been barred from any standing in court by reason of subsection c. He was, however, allowed to sue and his bill dismissed upon other grounds.

In *Schutte* v. *Miller*, 287 Fed. 604, 606, the court below gave its conclusion as to the effect of subsection b of section 9 in the following language:

> "The act further provided that any person not an enemy, or ally of enemy, claiming any interest, right, or title in any money or other property which may have been delivered to the Alien Property Custodian thereunder, or to whom any debt may be owing from an enemy or ally of enemy, whose property or any part thereof, shall have been delivered to the Alien Property Custodian thereunder, may within a prescribed time institute a suit in equity, making the Alien Property Custodian and the Treasurer of the United States defendants, to establish the interest, right, title, or debt so claimed. *Under a later amendment*, 41 Stat. 977, *authority was given to the President to return to certain classes of persons who fell within the definition of the word 'enemy' all such property as may have been taken from them by the Alien Property Custodian under the act as theretofore provided.* These classes included certain

> citizens of friendly nations, certain women intermarried with citizens of Germany or Austria, certain diplomatic or consular officers of enemy nations, and other classes who had come literally within the term 'enemy', but whom Congress wished to relieve from that disqualification."

That the construction which is now urged in this brief is in accord with the intent of Congress, must also be apparent from section 9, subdivision d, which originally was part of the amendment of June 5, 1920, and is now to be found in the amendment adopted March 4, 1923 (c. 285, 42 Stat. 1511), in the enactment known as the "Winslow Act." It provides as follows:

> "(d) Whenever a person, deceased, would have been entitled, if living, to the return of his money or other property hereunder, then his legal representative may proceed for the return of such money or other property as provided in subsection (a) hereof: *Provided, however,* That the President or the court, as the case may be, before granting such relief shall impose such conditions by way of security or otherwise, as the President or the court, respectively, shall deem sufficient to insure that such legal representative will redeliver to the Alien Property Custodian such portion of the money or other property so received by him as shall be distributable to any person not eligible as a claimant under subsections (a) or (c) hereof."

The significant part is the last clause of this subsection requiring a bond to insure redelivery of any money or property distributable to any person not eligible as a claimant under subsections a or c hereof. If the defendants' contention be correct, there can be no recovery under subsection a at all but only under sub-

section c. But Congress has declared that a person may be a claimant under subsection a *or* c, thus clearly indicating that subsections b and c are extensions of and coexistent with subsection a, as we contend, and not limitations or restrictions of subsection a, as the defendants contend.

The statute read as a whole is clear and simple: if the plaintiff is "not an enemy or ally of enemy", the remedy is under subsection a; if, however, the plaintiff be an "enemy or ally of enemy", then the remedy is under subsection b, or not at all. Obviously, if the plaintiff, because an "enemy or ally of enemy", could claim only under subsection b, the plaintiff would have to comply with the provisions of that subsection; and, if a corporation, would have to comply with the requirements of paragraph 6 thereof and be "entirely owned" by non-enemy individuals. Subsection a, however, is not similarly limited. It deals only with non-enemies and makes no distinction between them. In the nature of things, it could not have reasonably been otherwise. It was essential to the validity of the Act that persons, *not* "enemies" or "allies of enemies", should have the right to recover property erroneously taken from them. If they were in fact not "enemies" or "allies of enemies", their property should not have been disturbed in the first place. As we have seen, it is immaterial so far as the enemy or non-enemy character of a corporation is concerned, whether or not any of its capital stock was owned by Germans. In either contingency, it was equally a violation of the Act to seize the property of a neutral or allied corporation not doing business in or

with enemy territory, and hence it was clearly the purpose and intent of the Act equally to afford a remedy in all such cases.

Where the rights of "enemies" are concerned, however, the matter stands upon an entirely different footing. The return of their property is not a matter of right but of grace. It may be made conditional in any manner in which Congress sees fit. Under subsection b, therefore, paragraph 6 requiring enemy corporations to be entirely non-enemy-owned is appropriate. That enables corporations which are incorporated in Germany, or which did business there, for example, to have relief, if none of their stockholders was German. Corporations of this sort may be reasonably classified as a group of "enemies" under the Act who are, nevertheless, entitled to special consideration and grace not to be allowed to other "enemy" or "ally of enemy" corporations.

The decision in *Swiss Nat. Ins. Co.* v. *Miller,* 289 Fed. 571, decided in the court below and now pending on appeal in this court, is not opposed to the contention in this brief. In that case, the plaintiff admitted that it had been engaged in business in Germany at the time of the seizure, and hence was clearly an "enemy" under section 2-a, which defines an "enemy" as "any corporation . . . incorporated within any country other than the United States and doing business within such territory," *i. e.,* the territory of any nation with which the United States is at war; and the court specifically held that the cessation of doing business in an enemy country did not remove the taint of enemy character (289 Fed. at p. 573). It was, therefore, impossible for the

Swiss Insurance Company in the case referred to, to come within the terms of section 9-a allowing "any person not an enemy or ally of enemy" to sue. Hence the decision of the court is in no way inconsistent with the contentions in the case at bar, since Behn, Meyer & Company, the plaintiff herein, never did business in any enemy country, never was an "enemy" under the Act, and, consequently, comes within the class of suitors provided for in subsection a of section 9 of the Act.

The plaintiff in the *Swiss Insurance Company* case being an "enemy", had to find relief, if at all, under the terms of subsection b. It had to bring itself within the provisions of paragraph 6 of that subsection, inasmuch as it was a corporation and the terms of paragraph 6 were applicable to enemy corporations. As a part of the stock of the Swiss Insurance Company was concededly owned by enemy individuals, however, the plaintiff in that case could not make compliance with the only provisions of the enabling act under which it could claim. Accordingly, as above stated, it was denied relief.

In the case at bar, however, the plaintiff corporation is not an "enemy." It is not seeking to avail of a legislative favor under subsection b, but only of its lawful rights under subsection a, and hence it is wholly unaffected by the requirements of paragraph 6 of subsection b.

Whether or not enemy property in the United States shall be captured at all, or only in part, and in what manner and under what conditions, is not a judicial, but a legislative mattter. The power is given by the Constitution to Congress and not to the courts. Who shall

be regarded as an "enemy" under a statute providing for the seizure and sequestration of enemy-owned property, is for Congress alone to say. The definitions which it lays down to that end, therefore, may not be either restricted or enlarged by the judicial power, whatever may be the views of the courts as to the wisdom or folly of the Congressional action. What Congress has thus omitted, the courts may not add. Here, it is submitted, it is too plain to permit of any construction that a corporation which is not incorporated in enemy territory and which does no business there, is not an "enemy" for any of the purposes of the Trading with the Enemy Act (sec. 2); that, not being an "enemy", its property may not lawfully be seized by the Alien Property Custodian, and that an unlawful taking thereof necessarily gives rise to the cause of action expressly authorized by subsection a of section 9 to be brought by "any person not an enemy or ally of enemy."

In the case at bar, the British corporation which is the plaintiff, was doing business in British, American and neutral territory. It was not in any degree fostering or aiding enemy commerce or contributing to the means or wealth of the enemy. The bill alleges that it was organized in 1905 (p. 1). It is impossible, therefore, to compare it with companies formed on the eve of the war or during the war in order to accomplish some covert purpose. There is no basis for any such contention here. The plaintiff company was formed nearly a dozen years before the war; it never had done any business in any enemy country; its business had always been an ordinary merchandising business; its legal domicile was not in

Germany, nor even in any neutral country like Switzerland where there might be a possibility of clandestine communication with the enemy, but in the territory of one of our allies, Great Britain. To deny it relief is, we submit, to render irreparable the gross wrong that the Alien Property Custodian did in seizing the plaintiff's property as that of an "enemy" when in fact and law the plaintiff was not an "enemy." "When the seizure is unlawful, the petition under section 9 does no more than establish the plaintiff's right and the consequent illegality of the capture. . . . Anything else would be a premium upon lawless seizures by the sovereign, the fountain of justice." *Simon* v. *Miller,* 298 Fed. 520, 524, 525.

The court below recognized that the "plaintiff is in its corporate entity non-enemy", that "by this amendment [to section 9 of the Trading with the Enemy Act] it was clearly the intent of Congress to liberalize and enlarge the right of recovery," and that "the 1923 amendment is a further enlargement of the rights of claimants" (296 Fed. at p. 1003; p. 10). It nowhere declared that either the 1920 or 1923 amendment revised or extended the statutory definition of "enemy", or in any wise conferred upon it a meaning different from that expressly laid down in section 2. The court below did not cite or rely upon the English cases referred to by the defendants; it doubtless realized that they were only illustrations of the so-called "stock control theory" of enemy character of corporations, which Congress, as we have seen, had deliberately rejected in adopting the

statutory definition of "enemy". Nevertheless, the court below erroneously held that the plaintiff was not entitled to recover, because "a portion of its stock is enemy-owned" (*id.*). Having previously declared that a corporation was an "enemy" "even if only one stockholder out of many [was] an enemy" (*Swiss Nat. Ins. Co.* v. *Miller*, 289 Fed. 571, 576), the court below presumably deemed itself bound by that rule. We submit that there is nothing in the Act to warrant it.

The court below also referred to paragraph 11 of subsection b of section 9. That was one of the paragraphs added by the amendment of March 4, 1923 (c. 285, 42 Stat. 1511), or the so-called Winslow Act. That statute, which was indisputably intended further to ameliorate the conditions of "enemies", added several new paragraphs to subsection b of section 9. It provided for the release of ten thousand dollars in money or property to "enemy" individuals and corporations. In addition, in the new paragraph numbered 11, it provided for the release of *all* property belonging to "enemy" corporations in which a majority of the stock was non-enemy-owned. In other words, it extended the relief previously accorded to "enemy" corporations in the amendment of June 5, 1920 (sec. 9b, par. 6). As we have seen above, just as paragraph 6 of subsection b of section 9 which was manifestly intended by Congress to benefit "enemy" corporations entirely non-enemy-owned and to have no restrictive effect on non-enemy corporations, was construed in the courts below to bar non-enemy corporations with even a single enemy stockholder, so now the court

below repressively construed the new paragraph 11 of the same subsection. Instead of applying it remedially and exclusively to cases of "enemy" corporations a majority of whose stock was non-enemy owned, the court applied it restrictively and to non-enemy corporations whose property had been previously wrongfully seized by the Alien Property Custodian. In so doing, it is confidently submitted that the court below made the same error in construing paragraph 11 which it made in construing paragraph 6 of subsection b. It entirely misconceived the scheme of section 9; it failed to observe that subsection a thereof was applicable *solely to non-enemies,* individual and corporate, and that subsection b was applicable, in all its separately numbered paragraphs, *solely to "enemies,"* individual and corporate, and was not a limitation or restriction upon the preceding subsection. That is the fundamental error which led to the erroneous ruling of the lower courts herein.

Conclusion.

It is, therefore, submitted that as the plaintiff corporation was not an "enemy" or "ally of enemy" under the Trading with the Enemy Act, it was unlawful to have seized and liquidated its property as though it were an "enemy" or "ally of enemy"; that it is clearly entitled, because not "an enemy or ally of enemy", to sue under subsection a of section 9 of the Act for the proceeds of its property unlawfully seized and sold, and that nothing contained in subsection b of section 9 was

intended to bar it from relief. Accordingly, the decree of the courts below dismissing the bill of complaint herein were erroneous and should be reversed, and the motion of the defendants in all respects denied.

Washington, D. C., November, 1924.

WILLIAM D. GUTHRIE,
ISIDOR J. KRESEL,
BERNARD HERSHKOPF,
Of counsel for the appellant.

Supreme Court of the United States,

OCTOBER TERM, 1924, No. 343.

BEHN, MEYER & COMPANY, LIMITED,
Appellant,

v.

THOMAS W. MILLER, as Alien Property Custodian, and FRANK WHITE, as Treasurer of the United States,
Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APPENDIX TO BRIEF ON BEHALF OF THE APPELLANT.

(AMENDMENTS TO SECTION 9 OF THE TRADING WITH THE ENEMY ACT.)

INDEX.

APPENDIX.

(41 Stat. 977)

CHAP. 241.—An Act to amend section 9 of an Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 9 of an Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended, be, and hereby is, amended so as to read as follows:

"Sec. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said

claimant may, at any time before the expiration of six months after the end of the war institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or of the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant, or suit otherwise terminated.

"(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

"(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

"(2) A woman who at the time of her marriage was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States, in the prosecution of said war, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

"(3) A woman who at the time of her marriage was a citizen of the United States (said citizenship having been acquired by birth in the United States), and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

"(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was, at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

"(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

"(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

"(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

"(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government—then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian; *Provided,* That no person shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such citizen or subject at the time first specified in this subsection, if he has become or shall become ipso facto or through exercise of option, a citizen or subject of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following named powers: The British Empire, France, Italy, and Japan (of the other part), or (second) under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part). For the purposes of this section any citizen or subject of a State or free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be

deemed to be a citizen or subject of such nation. And the receipt of the said owner or of the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian shall be a full acquittance and discharge of the Alien Property Custodian or the Treasurer of the United States, as the case may be, and of the United States in respect to all claims of all persons heretofore or hereafter claiming any right, title, or interest in said property, or compensation or damages arising from the capture of such property by the President or the Alien Property Custodian: *Provided further, however,* That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein.

"(c) Any person whose property the President is authorized to return under the provisions of subsection (b) hereof may file notice of claim for the return of such property, as provided in subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such property, as provided in said subsection, and with like effect. The President or the court, as the case may be, may make the same determinations with respect to citizenship and other relevant facts that the President is authorized to make under the provisions of subsection (b) hereof.

"(d) Whenever a person, deceased, would have been entitled, if living, to the return of his money or other property hereunder, then his legal representative may proceed for the return of such property as provided in subsection (a) hereof: *Provided, however,* That the President or the court, as the case may be, before granting such relief shall impose such conditions by way of security or otherwise as the President or the court, respectively, shall deem sufficient to insure that such legal representative will redeliver to the Alien Property Custodian such portion of the money or other property so received by him as shall be destributable to any person not eligible as a claimant under subsections (a) or (c) hereof.

"(e) No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.

"(f) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

"(g) This section shall not apply, however, to money paid to the Alien Property Custodian under section 10 hereof."

Approved, June 5, 1920.

(41 Stat. 1147.)

CHAP. 76.—An Act to amend section 9 of an Act entitled "An Act to define, regulate and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That subdivisions (2) and (3) of subsection (b) of section 9 of an Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended, be, and hereby are, amended so as to read as follows:

"(2) A woman who, at the time of her marriage, was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany, or Austria-Hungary and that the

money or other property concerned was not acquired by such woman either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917.

"(3) A woman who, at the time of her marriage, was a citizen of the United States and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned, was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917."

Approved, February 27, 1921.

(42 Stat. 1511.)

CHAP. 285.—An Act to amend the Trading with the Enemy Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 9 of the "Trading with the Enemy Act," as amended, is amended to read as follows:

"Sec. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the

President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt, so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

"(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was

voluntarily delivered to him or was seized by him was—

"(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

"(2) A woman who, at the time of her marriage, was a subject or citizen of a nation which has remained neutral in the war, or of a nation, which was associated with the United States in the prosecution of said war, and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman, either directly or indirectly from any subject or citizen of Germany or Ausria-Hungary subsequent to January 1, 1917; or

"(3) A woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or who was a daughter of a resident citizen of the United States and herself a resident or former resident thereof, or the minor daughter or daughters of such woman, she being deceased; or

"(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer, and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

"(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War

Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

"(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States or free cities, other than Germany, or Austria, or Hungary or Austria-Hungary, and is so owned at the time of the return of its money or other property hereunder; or

"(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

"(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government; or

"(9) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or who is not a citizen or subject of any nation, State, or free city, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000 is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided*, That an individual shall not be entitled, under this paragraph, to the return of any money or other property owned by a partnership, association, unincorporated body of individuals, or corporation at the time it was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder; or

"(10) A partnership, association, other unincorporated body of individuals, or corporation, and that it is not otherwise entitled to the return of its money or other property, or any part thereof, under this section, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000, is nevertheless susceptible of

division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided,* That no insurance partnership, association, or corporation, against which any claim or claims may be filed by any citizen of the United States with the Alien Property Custodian within sixty days after the time this paragraph takes effect, whether such claim appears to be barred by the statute of limitations or not, shall be entitled to avail itself of the provisions of this paragraph until such claim or claims are satisfied; or

"(11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary or Austria-Hungary: *Provided,* however, That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection;—

"Then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian: *Provided,* That no person shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such citizen or subject at the time first specified in this subsection, if he has become or shall become, ipso facto or through exercise of option, a citizen

or subject of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part), or (second) under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part). For the purposes of this section any citizen or subject of a State or free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be deemed to be a citizen or subject of such nation. And the receipt of the said owner or of the person by whom said money or other property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian shall be a full acquittance and discharge of the Alien Property Custodian or the Treasurer of the United States, as the case may be, and of the United States in respect to all claims of all persons heretofore or hereafter claiming any right, title, or interest in said money or other property, or compensation or damages arising from the capture of such money or other property by the President or the Alien Property Custodian: *Provided further, however,* That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein.

"(c) Any person whose money or other property the President is authorized to return under the provisions of subsection (b) hereof may file notice of claim for the return of such money or other property, as provided in

subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such money or other property, as provided in said subsection, and with like effect. The President or the court, as the case may be, may make the same determinations with respect to citizenship and other relevant facts that the President is authorized to make under the provisions of subsection (b) hereof.

"(d) Whenever a person, deceased, would have been entitled, if living, to the return of his money or other property hereunder, then his legal representatives may proceed for the return of such money or other property as provided in subsection (a) hereof: *Provided*, however, That the President or the Court, as the case may be, before granting such relief shall impose such conditions by way of security or otherwise, as the President or the court, respectively, shall deem sufficient to insure that such legal representative will redeliver to the Alien Property Custodian such portion of the money or other property so received by him as shall be distributable to any person not eligible as a claimant under subsections (a) or (c) hereof.

"(e) No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.

"(f) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

"(g) The legal representative (duly appointed by a court in the United States) of a person, deceased, whose money or other property has been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, may (if not entitled to proceed under subsection (d) of this section) proceed under subsection (a) for the recovery of any interest, right, or title in any such money or other property which has, by reason of the death of such person, become the interest, right, or title of a citizen of the United States, unless such citizenship was acquired through naturalization proceedings in which the declaration of intention was filed after November 11, 1918. Such legal representative shall give a bond, in a penal sum and with sureties satisfactory to the President or the court, as the case may be, conditioned that he will redeliver to the Alien Property Custodian all such money or other property not distributed to such citizen, or, if deceased, to his heirs or legal representatives.

"(h) The aggregate value of the money or other property returned under paragraphs (9) and (10) of subsection (b) to any one person, irrespective of the number of trusts involved, shall in no case exceed $10,000.

"(i) For the purposes of paragraphs (9) and (10) of subsection (b) of this section accumulated net income, dividends, interest, annuities, and other earnings, shall be considered as part of the principal.

"(j) Subsection (g) and paragraphs (9) and (10) of subsection (b) of this section shall not apply to any patent, trade-mark, print, label, copyright, or right therein or claim thereto, conveyed, transferred, assigned, or delivered to the Alien Property Custodian, or seized by him, or to the proceeds received from the sale, license, or other disposition of any such patent, trade-mark, print, label, copyright, or right therein or claim thereto; but the Alien Property Custodian is authorized and directed to return to the person entitled thereto, whether or not an enemy or ally of enemy and regardless of the value, any patent, trade-mark, print, label, copyright, or right

therein or claim thereto, which has been conveyed, transferred, assigned, or delivered to the Alien Property Custodian, or seized by him, and which (1) has not been sold, licensed, or otherwise disposed of under the provisions of this Act, and (2) is not involved (at the time this subsection takes effect) in litigation in which the United States, or any agency thereof, is a party.

"(k) This section shall not apply, however, to money paid to the Alien Property Custodian under section 10 hereof." * * *

Approved, March 4, 1923.

Supreme Court of the United States,

OCTOBER TERM, 1924, No. 343.

BEHN, MEYER & COMPANY, LIMITED,
Appellant,

v.

THOMAS W. MILLER, as Alien Property Custodian, and FRANK WHITE, as Treasurer of the United States,
Appellees.

ANSWER OF BEHN, MEYER & COMPANY, LIMITED, TO APPLICATION OF LAZARUS G. JOSEPH, AS ALLEGED RECEIVER, FOR LEAVE TO INTERVENE AND BE SUBSTITUTED AS PLAINTIFF HEREIN.

WILLIAM D. GUTHRIE,
ISIDOR J. KRESEL,
BERNARD HERSHKOPF,
Of Counsel for Plaintiff-Appellant.

Supreme Court of the United States

OCTOBER TERM, 1924, No. 343.

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Behn, Meyer & Company, Limited, the plaintiff and appellant in the above entitled cause, answering the application of Lazarus G. Joseph, as alleged receiver, for leave to intervene herein and be substituted in its place and stead as such plaintiff, respectfully shows unto this Honorable Court as follows:

That the alleged receivership was at all times null and void and has been duly vacated and set aside by the courts in the Philippine Islands, as fully appears by the facts stated below.

I. Behn, Meyer & Company, Limited, was incorporated in the British Straits Settlements in 1905. It duly secured permission to do business in the Philippine Islands as a foreign corporation and operated several branches there, and it was thus engaged in business in the Philippine Islands when war broke out between the United States and Germany in April, 1917.

II. On October 6, 1917, the President approved the Act of Congress known as the Trading with the Enemy Act (c. 106, 40 Stat. 411). In and by section 7-c thereof, it was made the duty of any person holding property which the President determined to be enemy-owned to surrender the same to the Alien Property Custodian if the President so required. In and by an Executive Order dated October 12, 1917, paragraph XXIX thereof, the President, as authorized by section 5 of said Act, vested in the Alien Property Custodian the powers conferred upon him in section 7-c of said Act. In the Philippine Islands the Alien Property Custodian was represented by a Managing Director. Concerning that official, the following is stated in the report of February 22, 1919, made by Hon. A. Mitchell Palmer, Alien Property Custodian, to the President under section 6 of the Trading with the Enemy Act, viz. (pp. 168, 169):

> "In each of these [insular possessions of the United States] there has been appointed a representative of the Alien Property Custodian, who, in the Philippine Islands, is known as managing director, and who has, in that instance, by virtue of authority from the President, the right to make demands and issue acquittances in the name of the Alien Property Custodian. . . .

"In the Philippine Islands, Hon. Francis Burton Harrison, Governor General of the Philippines, was the special representative and managing director and was appointed director by the President to carry out certain portions of the trading-with-the-enemy act under the supervision of the Alien Property Custodian. Governor General Harrison was succeeded by Mr. Douglas M. Moffat, of New York, who was sent out especially to administer the office of Alien Property Custodian in Manila."

III. In February, 1918, while Governor General Harrison was the Managing Director for the Philippine Islands as aforesaid, and acting on behalf of the Hon. A. Mitchell Palmer, Alien Property Custodian, the said Harrison took possession of all the property and business of Behn, Meyer & Company, Limited, on the alleged ground that it was enemy-owned. On February 16, 1918, as Managing Director for the Alien Property Custodian, he wrote Behn, Meyer & Company, Limited, that Mr. W. D. Pemberton had been appointed by him "receiver" (plainly employing the term in the sense of depositary, supervisor, custodian, or manager) of Behn, Meyer & Company, Limited, and would assume charge of the business and assets of said firm. This demand was delivered to the Philippine manager of Behn, Meyer & Company, Limited, J. M. Menzi, who acquiesced in and complied therewith.

IV. In order to facilitate the carrying on and liquidation of the business of Behn, Meyer & Company, Limited, by the Alien Property Custodian, the War Trade Board on March 19, 1918, issued a license to Behn, Meyer & Company, Limited, "to perform such acts as may be

necessary to continue the business of said Behn, Meyer & Co., Ltd., or in the alternative, to perform such acts as may be necessary for a complete sale, liquidation and disposition of the business, assets and property of the said Behn, Meyer & Co., Ltd., according as it may seem advisable to the Alien Property Custodian that the business of Behn, Meyer & Co., Ltd., should continue or should be liquidated, sold and disposed of." The license further provided that—

> "(1) All acts performed hereunder shall be carried out under the direction and supervision of the Alien Property Custodian, and in accordance with such plan and method as may be desired by the Alien Property Custodian. . . .
>
> "(2) The licensee shall transfer to the Alien Property Custodian as the said Alien Property Custodian may require, the proceeds of any liquidation, sale and disposition, which may occur as aforementioned. . . ."

V. The property of Behn, Meyer & Company, Limited, in the Philippines was thereupon liquidated by and under the direction of the Managing Director of the Alien Property Custodian through said Pemberton and said Menzi. Menzi, as Philippine manager of Behn, Meyer & Company, Limited, held a power of attorney from it; and, at the direction of the Managing Director of the Alien Property Custodian, acted thereunder in aid of said liquidation. On December 12, 1921, the Bureau of Law of the Alien Property Custodian at Washington wrote one of the counsel for Behn, Meyer & Company, Limited, in part as follows:

"You are further advised that under Report 50426, dated February 19th, 1919, W. W. Pemberton, as Receiver for Behn, Meyer & Company, Ltd., reported cash balance of proceeds of the liquidation of the assets of the above mentioned firm located in the Philippine Islands, amounting to 392,674.96 pesos. On this report there was a demand dated February 21st, 1919, service accepted by W. W. Pemberton, Receiver, of the date of February 21, 1919. Under this demand, Behn, Meyer & Company, Ltd., was determined to be an enemy. Under this report there was an accounting to the Alien Property Custodian for $196,337.48 representing the exchange value or equivalent of the amount demanded.

"Under Report 50422, Trust 50238, made by Mr. Pemberton as receiver, covering balance in his hands in further adjustment of his accounts in liquidation of Behn, Meyer & Company, Ltd., there was a demand dated January 29th, 1919, service accepted January 29th, 1919, in which Behn, Meyer & Company, Ltd., is determined to be an enemy and an accounting made to this office for $65,320 as representing the exchange value or equivalent of the sum reported."

VI. The aforesaid liquidation, begun under Governor General Harrison as Managing Director of the Alien Property Custodian, was concluded in the early part of 1919 under Douglas M. Moffat as his successor as such Managing Director. Thus, for example, the accounts receivable of the company were disposed of by Menzi in January, 1919, at the express direction of said Moffat as Managing Director and under Menzi's said power of attorney as manager of Behn, Meyer & Company, Limited, as well as pursuant to the said War Trade Board license. The bill of sale has the following notation thereon, viz.:

"Approved, A. Mitchell Palmer, Alien Property Custodian, By Douglas M. Moffat, Managing Director for the Phillippine Islands."

VII. In the report of February 22, 1919, made to the President by Hon. A. Mitchell Palmer, as Alien Property Custodian, under section 6 of the Trading with the Enemy Act, and by the President submitted to Congress on March 1, 1919 (Congressional Record, 65th Congress, 3rd session, Mar. 1, 1919, vol. 57, No. 81, p. 4880), the following appears in respect of the liquidation of enemy property in the Philippines (p. 172):

> "The principal German houses [in the Philippines] with their approximate capitalization follow:
>
> * * * *
>
> "Behn Meyer & Co. (Ltd.).....$700,000
>
> * * * *
>
> "When the Alien Property Custodian was about to take over these concerns, and thus eliminate from the industrial life of the Philippines this strong German hold by an immediate liquidation of the enemy interests, he found that it was unwise to so liquidate immediately . . . Under these circumstances he installed supervisors and the companies continued in business as going concerns until after the amendment to the trading with the enemy act, which authorized the Alien Property Custodian to sell the enemy interests; whereupon the companies were either liquidated under existing licenses of the War Trade Board, with an accounting to the Alien Property Custodian of the proceeds, or the enemy interest held by the Alien Property Custodian was sold at public auction."

In view of the foregoing, it should be evident that it is incorrect to assert, as do the papers now submitted in

support of the present application, that the Alien Property Custodian did not authorize and subsequently disapproved what had been done in the Philippines in reference to the seizure and liquidation of the property of Behn, Meyer & Company, Limited (see paragraph 7 of the so-called "amended complaint").

VIII. In said report of the Alien Property Custodian, at pages 538 to 542, inclusive, the court will find Executive Orders, procured at the instance or request of the Alien Property Custodian, disapproving and setting aside various acts of his Managing Director in the Philippine Islands; but among these, it will be observed, there is none which affects or in any wise concerns the seizure or liquidation of the property of Behn, Meyer & Company, Limited.

IX. The said liquidation was completed, the business of Behn, Meyer & Company, Limited, in the Philippines in all respects terminated, and the proceeds of the liquidation sent in 1919 from the Philippine Islands to the Treasurer of the United States at Washington, by or on behalf of the Managing Director of the Alien Property Custodian in the Philippines. The Alien Property Custodian, in his aforesaid report to the President of February 22, 1919, referring to the sale and liquidation of a number of alleged enemy-owned businesses in the Philippines and, among others, Behn, Meyer & Company, Limited, stated (p. 172) that "the money realized from the sales of these properties has been turned into the Treasury of the United States."

X. The court will further note that, in 1919, three years before the alleged receivership of Lazarus G. Joseph is even claimed to have begun, (1) there was no longer any property of Behn, Meyer & Company, Limited, in the Philippine Islands, (2) the corporation was no longer carrying on any business there, (3) its right to do so had been taken away and destroyed by the Governor General and the Alien Property Custodian, and (4) the limited right to do business, previously accorded to it under license of the War Trade Board, had terminated and expired, inasmuch as it had been granted solely for the purpose of enabling the Alien Property Custodian to liquidate the business, and such liquidation had then been completed and accomplished.

XI. Notwithstanding the fact that Behn, Meyer & Company, Limited, was not a corporation of the Philippine Islands and had no property and did no business there in August, 1922, the present application impliedly asserts that the Court of First Instance of Manila in the Philippine Islands had power and authority on August 10, 1922, to appoint a receiver for it or its property. It is submitted that it is settled law that a court has no jurisdiction to appoint a receiver of a foreign corporation as receiver of the corporation itself, nor in any case where the foreign corporation has no property within the jurisdiction of the court. (See Corpus Juris, vol. 14 a, pp. 1334-8, for a collation of authorities.)

XII. In February, 1922, A. N. Jureidini & Brothers, a British concern doing business in the Philippine Islands, recovered a judgment for 3,488 pesos, or about

$1,744, against Behn, Meyer & Company, Limited. Thereupon, instead of attempting to enforce the exclusive remedy provided by section 9 of the Trading with the Enemy Act for those claiming to be creditors of one whose property had been demanded by and was in the hands of the Alien Property Custodian, A. N. Jureidini & Brothers caused execution to be issued on said judgment and when it was thereafter returned unsatisfied, obviously because Behn, Meyer & Company, Limited, had no property in the Philippines since the seizure and liquidation by the Alien Property Custodian as aforesaid, A. N. Jureidini & Brothers applied for a receiver, and on August 10, 1922, an order was made purporting to appoint the applicant in the case at bar, Lazarus G. Joseph, as such alleged receiver.

XIII. Section 9-a of the Trading with the Enemy Act as amended June 5, 1920 (c. 241, 41 Stat. 977), provided that any person not an enemy or ally of enemy who claimed that a debt was due him from one whose property had been taken by the Alien Property Custodian could file a claim for the payment of the debt with the Alien Property Custodian or sue the Alien Property Custodian or Treasurer of the United States therefor. Section 9-e provided as follows:

> "No money or other property shall be returned nor any debt allowed under this section [that is, section 9 in all its various subdivisions] to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt

> be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder."

XIV. A. N. Jureidini & Brothers could not in 1922 and cannot now comply with the provisions of section 9-e, because the debt in question did not arise with reference to the money or property held by the Alien Property Custodian or Treasurer of the United States. It is submitted that to permit A. N. Jureidini & Brothers, and other similarly situated, to effect recoveries through the medium of an alleged receivership such as is now before the court, would clearly tend to permit an evasion of the Trading with the Enemy Act.

XV. In 1922 section 9-f of the Trading with the Enemy Act provided, and still provides, as follows:

> "Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court."

Notwithstanding this express prohibition of an Act of Congress, A. N. Jureidini & Brothers sought and obtained from a court an order of receivership which, it is now insisted by the applicant, the alleged receiver, applies to and encumbers the money or property held by the Alien Property Custodian. It should be pointed out here, as the Court of First Instance at Manila itself subsequently did in its opinion of September 26, 1923 (Exhibit A hereto), that—

> "At the time when there was issued the order appointing a depositary or receiver in this case, the attention of the court was not called to the fact that the properties belonging to the plaintiffs herein [*i. e.*, Behn, Meyer & Company, Limited] had been sold at a prior date by the Alien Property Custodian to John Bordman. Had the attention of the court been called to such a circumstance, said order would not have been made, especially if it were shown that said properties had been sold long before the rendering of the judgment in favor of Messrs. A. N. Jureidini & Bros."

It follows, therefore, that said alleged receivership was in violation of the Trading with the Enemy Act and void *ab initio*.

XVI. After his appointment as receiver as aforesaid, the said Joseph undertook the prosecution of certain actions and proceedings in his capacity as said alleged receiver. Among others, he undertook certain proceedings in an action by Behn, Meyer & Company, Limited, against J. S. Stanley and others. In this action the said Joseph moved to compel J. M. Menzi to deliver to him the books of Behn, Meyer & Company, Limited, which said Menzi held for account of one John Bordman who had purchased them. Thereupon the said Menzi moved that the petition of Joseph be rejected; and Menzi, Bordman and the Bank of the Philippine Islands further moved for leave to intervene in the action for the purpose of setting aside the alleged receivership under the pretended authority of which the said Joseph was thus attempting to proceed against them. Section 121 of the Philippine Code of Civil Procedure (Act No. 190, enacted August 7, 1901) provides in part that—

> "A person may, at any period of a trial, upon motion, be permitted by the court to intervene in an action or proceeding, if he has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both. Such intervening party may be permitted . . . to unite with the defendant in resisting the claims of the plaintiff, or to demand anything adverse to both plaintiff and defendant."

XVII. These motions thereafter duly came on for hearing in Division III of the Court of First Instance of Manila and were decided by the court on September 26, 1923. The court thereupon duly granted the said Menzi, Bordman and the Bank of the Philippine Islands leave to intervene as prayed and duly declared the alleged receivership of the said Joseph to be null and void and set it aside. A translation of its opinion and judgment is hereunto annexed, made a part hereof and marked Exhibit A. The concluding paragraph thereof reads as follows:

> "Now therefore it is resolved to allow such parties [*i. e.*, the said Menzi, Bordman and Bank of the Philippine Islands], as they are hereby allowed and authorized, to intervene in this case; and whereas the court has come to the conclusion that the court has or had no jurisdiction to appoint a judicial depositary or receiver due to the fact that all the properties of the aforementioned plaintiffs [*i. e.*, Behn, Meyer & Company, Limited] have been sold by the Alien Property Custodian pursuant to the law of Congress referred to above, now therefore it is resolved likewise to set aside and quash, as the same is hereby set aside and quashed, the order of the court of August 10, 1922, appointing as judicial depositary or receiver Lazarus G. Joseph. Let the bond given by said depositary or receiver for the faithful discharge

of his duty be released; and it is hereby declared that J. M. Menzi is not bound to deliver to the aforementioned Lazarus G. Joseph the books of which he is now in possession, which books were formerly the property of the plaintiffs, Messrs. Behn, Meyer & Co., Ltd."

XVIII. Thereafter and on October 3, 1923, the said Joseph moved for a reconsideration of the order made by the Court of First Instance of Manila on September 26, 1923. The grounds of this motion were: (1) that the Alien Property Custodian had not validly or at all disposed of the property of Behn, Meyer & Company, Limited, and (2) that the Alien Property Custodian could not lawfully have taken such action, (a) because the company had never been validly determined to be an "enemy" under the Trading with the Enemy Act, and (b) because there had not been a proper demand by the Alien Property Custodian since the company had a license to do business from the War Trade Board. The facts in these respects have been stated above. The Court of First Instance of Manila found the application to be without any basis in law or fact, rejected the motion and reaffirmed its prior ruling in an opinion and judgment dated December 3, 1923. A translation thereof is hereunto annexed, made a part hereof and marked Exhibit B.

XIX. Pretending to be receiver of Behn, Meyer & Company, Limited, as aforesaid, the said Joseph as such also brought suit against the Hamburg Amerika Line in the Philippine courts and was defeated. He thereupon appealed to the Supreme Court of the Philippine Islands, and was again defeated, that court holding that he had

no standing to maintain the action inasmuch as he was not in law or fact receiver of Behn, Meyer & Company, Limited, and that his alleged receivership was null and void.

XX. On November 4, 1924, the Clerk of the Supreme Court of the Philippine Islands sent to the New York counsel for Behn, Meyer & Company, Limited, the following cablegram in reference to the said appeal of Lazarus G. Joseph as said alleged receiver in the said Hamburg Amerika case, viz.:

> "THIS SUPREME COURT DECIDES CASE LAZARUS G. JOSEPH AS RECEIVER OF BEHN MEYER AND COMPANY LIMITED VERSUS HAMBURG AMERIKA LINE AS FOLLOWS STOP THERE ARE TWO QUESTIONS FOR THIS COURT TO DECIDE IN THIS APPEAL FIRST HAS THE PLAINTIFF LAZARUS JOSEPH AS RECEIVER OF BEHN MEYER AND COMPANY JURIDICAL PERSONALITY TO INSTITUTE THIS ACTION AND PROSECUTE THE APPEAL STOP SECOND AND HAS THE JUDGMENT FOR PESOS 16655 CENTAVOS 53 RENDERED IN CIVIL CASE NUMBERED 14819 BY THE COURT OF FIRST INSTANCE OF MANILA IN FAVOR OF BEHN MEYER AND COMPANY AND AGAINST THE HAMBURG AMERIKA LINE BEEN PAID STOP UPON THE FIRST QUESTION THE COURT HOLDS THAT THE PROPERTY OF BEHN MEYER AND COMPANY HAVING BEEN SOLD TO JOHN BORDMAN IT HAD CEASED TO EXIST AND THERE COULD BE NO RECEIVER APPOINTED AND THE APPOINTMENT OF JOSEPH WAS NULL AND VOID STOP UPON THE SECOND QUESTION THE COURT HOLDS THAT BEHN MEYER AND COMPANY PAID ITSELF THE AMOUNT OF THE JUDGMENT SUED ON FROM FUNDS IN ITS HANDS BELONGING TO THE HAMBURG AMERIKA LINE PRIOR TO THE SALE OF BEHN MEYER AND COMPANY TO BORDMAN STOP THE CASE IS DISMISSED THE MOTION FOR REHEARING BY JOSEPH WAS ALSO DENIED
>
> V ALBERT CLERK SUPREME COURT PHILIPPINE ISLANDS."

The said appeal was decided in favor of the Hamburg Amerika Line on September 16, 1924; and the said motion of the said Joseph as alleged receiver for a rehearing thereof was denied November 3, 1924.

XXI. For the foregoing reasons it is submitted that the applicant Joseph is not now and never was the lawful receiver of Behn, Meyer & Company, Limited, or of any of its property, and that any color or semblance of authority as such which may have inhered in him by virtue of the said order of August 10, 1922, purporting to appoint him as such, has likewise been annulled by the subsequent adjudications of the Philippine courts, including the highest court. Exhibits A and B hereto make it plain that the court which originally attempted to appoint him receiver has since declared said appointment to have been (1) improvidently made as a result of a failure to disclose to it essential matters of fact, and (2) null and void because in violation of an Act of Congress. For these serious reasons, the court removed the said Joseph as its officer or receiver.

XXII. Nevertheless, it is now contended by the applicant in his moving papers that the mere fact that he has filed a bill of exceptions and taken an appeal to the Supreme Court of the Philippine Islands from the orders vacating his alleged receivership operates to continue and reinstate him as such receiver until the final determination of his appeal, notwithstanding the force and effect of the orders or decrees, Exhibits A and B hereto, wherein the court which appointed him has refused him any recognition as such.

XXIII. The moving papers set forth no support for any such contention, and it is submitted that it is not the law of the Philippine Islands. In *Watson & Co.* v. *Enriquez et al.*, 1 Philippine Reports 480, a similar contention was overruled. In that case a preliminary injunction had been obtained. After hearing, it was vacated. Thereupon a bill of exceptions was filed and an appeal to the Supreme Court taken. It was argued that as section 144 of the Philippine Code of Civil Procedure (Act. No. 190, enacted Aug. 7, 1901) provided in part that "the filing of a bill of exceptions shall of itself stay execution until final determination of the action, unless for special reasons stated in the bill of exceptions the court shall order that execution be not stayed, in which event execution shall issue at once", and as the order of the lower court allowing the bill of exceptions was silent upon the subject, the filing of the bill of exceptions and the taking of the appeal operated to continue or reinstate the injunction, despite the decree of the Court of First Instance to the contrary. The Supreme Court of the Philippines, however, ruled otherwise. As stated in the syllabus of the report cited above, the Supreme Court of the Philippine Islands held that "the filing of a bill of exceptions on appeal does not revive a preliminary injunction which has been dissolved by the lower court." In that respect the decision is the same as that of this court in like cases. *Slaughter House Cases,* 10 Wall. 273, 297; *Hovey* v. *McDonald,* 109 U. S. 150, 159-62; *Leonard* v. *Ozark Land Co.,* 115 U. S. 465.

XXIV. The reasoning of the Supreme Court of the Philippine Islands in the *Watson* case (*supra*) should make it plain that section 144 of the Code of Civil Procedure does not apply in cases where an injunction is dissolved or a receivership set aside. The appropriate function of that enactment is limited to cases where the appeal operates, for example, as a *supersedeas* against the execution of a money judgment. Where, however, a receivership is vacated, that is to say, where a court removes its own official whom it had improvidently appointed without right or jurisdiction, the intrinsic force of the decree, regardless of whether execution issue thereon or not, is such that a due regard for the rights of the court below and for the decent administration of justice should deny to the alleged receiver the power to nullify the deliberate judgment of the court below, even temporarily, by the mere filing of a bill of exceptions. Particularly should that be so where, as here, it appears that the appeal is manifestly without reasonable prospect of success, not only because without merit as the foregoing makes plain, but because of the refusal of the appellate court itself to recognize the said Joseph as receiver of Behn, Meyer & Company, Limited, in his appeal against the judgment in the Hamburg Amerika Line case, referred to above. In other words, it is the applicant's contention that he is still the lawful receiver of Behn, Meyer & Company, Limited, in the Philippine Islands, merely because he has taken an appeal to the Supreme Court of the Philippine Islands, notwithstanding (1) the fact that the lower court which appointed

him has removed him and twice declared his alleged receivership to have been improvident and void, and (2) the fact that the very court to which he has now appealed has already twice determined in his case against the Hamburg Amerika Line that his alleged receivership of Behn, Meyer & Company, Limited, was an utter nullity from the beginning.

XXV. The application of the said Joseph herein is to be substituted as plaintiff. To that end, he even submits with his papers an amended bill of complaint. In other words, the alleged receiver in effect desires to sue in the District of Columbia. It is submitted that, in any event, he has and can have no authority adequate to such a purpose. In section 176 of the Philippine Code of Civil Procedure (Act No. 190, enacted Aug. 7, 1901) it is declared that, under certain circumstances the court may appoint "a receiver to take charge of its [i. e., the corporation's] estate and effects, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the money and other properties that shall remain over among the stockholders or members." But it is nowhere provided that the receiver shall be vested with title to the corporate property. A Philippine receiver is, in effect, only a chancery receiver; at the most he takes possession of the property of a corporation and not title. (See *Whalen* v. *Pasig Iron Works,* 13 Philippine Reports 417, 423, following *Chicago Union Bank* v. *Kansas City Bank,* 136 U. S. 223, 236.)

XXVI. Assuming, therefore, that the receivership herein in question were in all respects valid and still in force, and that section 176 of the Code of Civil Procedure of the Philippine Islands is applicable to foreign corporations, it is, nevertheless, clear that, under the settled law of this court, the said receiver would have no authority to sue in the District of Columbia or in this court to recover demands or property situated here. So this court held in a far clearer case and under much stronger statutes than the alleged receiver can call to his aid in the case at bar. *Sterrett* v. *Second National Bank,* 248 U. S. 73.

XXVII. A receiver is, of course, only the arm of the court which appointed him, and it is well established law that he may not bring suits in the courts of other jurisdictions unless the appointing court authorizes him so to do (34 Cyc. 377-8). In the *Sterrett* case, *supra,* the receiver had express authority from the Alabama chancery court to sue in the United States District Court in Ohio (248 U. S. at p. 75), but, nevertheless, this court held that he was without authority to sue in the said federal court. In the case at bar the alleged receiver is without even the color of authority from any Philippine court to sue in the United States, or in the District of Columbia, or anywhere. Indeed, so far from being authorized by the Philippine court to sue, his entire authority to act for it in any respect, or to hold himself out as its representative for any purpose, has been deliberately withdrawn and destroyed by it.

XXVIII. It is submitted that, in any case, the alleged receiver has and can have no standing in this or any other court of the United States.

That the suit in the case at bar was duly brought by Behn, Meyer & Company, Limited, and is being maintained by it and its attorneys in fact and at law under due authority therefrom.

XXIX. It is not true that the British authorities have either dissolved the corporation of Behn, Meyer & Company, Limited, or taken over the corporation itself as such. The allegations to the contrary in the moving papers herein are unfounded. All that the British authorities in fact did was to take over some of the assets or property of the company in the Straits Settlements. On October 9, 1923, the Controller of the Local Clearing Office (Enemy Debts) of the Treasury at Singapore, British Straits Settlements, wrote as follows in this respect, viz.:

> "Under emergency local legislation only the business carried on by Messrs. Behn, Meyer & Co., Ltd., in the Colony was wound up and not Behn, Meyer & Co., Ltd., as a whole. Moreover, it was not possible to wind up the business of the branches of the firm in foreign countries as local law had no jurisdiction over them."

The British authorities have not assumed control of the corporation, or superseded its directors and officers in any way, or put in any new directors or officers.

XXX. After the Philippine branches of Behn, Meyer & Company, Limited, were taken over by the Alien Property Custodian of the United States, as

aforesaid, some of the stockholders of the corporation transferred their shares, so that in December, 1921, all of the stock of the said company (i.e., 10,000 preferred shares and 20,000 ordinary shares, each of a par value of $100 British Straits Settlements currency) had become and was the property of Ed. L. Lorenz-Meyer, Ad. Laspe and F. H. Witthoefft.

XXXI. Thereafter and on December 13, 1921, there was duly held an extraordinary general meeting of shareholders of Behn, Meyer & Company, Limited, at which all of the stockholders of the company were present and waived notice. At the said meeting Messrs. Emil Martens of New York; Karl Auer of Amsterdam, Holland; Werner Engler of St. Gall, Switzerland, and O. M. H. Sielcken and R. Schubert of Hamburg, were unanimously elected the directors of the company. At said meeting also Messrs. E. L. Lorenz-Meyer, Ad. Laspe and F. H. Witthoefft were unanimously reëlected the members of the consulting committee of the company, a committee having supervisory authority over the corporation and its officers.

XXXII. At said meeting of shareholders it was further resolved that—

> "A claim shall be filed with the Alien Property Custodian of the United States for the assets and all avails thereof of the Philippine branches of Behn, Meyer & Co., Limited, and a suit or suits if necessary to enforce such claim, shall be instituted and prosecuted by retaining Messrs. Jerome, Rand & Kresel of New York as attorneys for the company for the purpose"; that "authority be given to the board of directors or one or more members

thereof, to take any and all action or steps necessary or proper in the premises", and that "Mr. Emil Martens of New York be appointed as attorney for the company and a power of attorney for the purpose be executed."

XXXIII. On December 13, 1921, there was a meeting of directors of Behn, Meyer & Company, Limited. It was resolved thereat that—

> "In accordance with the resolutions passed at the extraordinary general meeting of shareholders notice of claim against the Alien Property Custodian at Washington be filed and a suit or suits to enforce the same be instituted and Messrs. Jerome, Rand & Kresel be retained for the purpose; further that Mr. O. M. H. Sielcken be authorized to execute any necessary instruments; further that Mr. Emil Martens of New York be appointed as attorney of this company and that the execution of the power of attorney by Mr. O. M. H. Sielcken be sanctioned."

XXXIV. On December 13, 1921, there was a meeting of the consulting committee of Behn, Meyer & Company, Limited, at which all the members thereof were present. The minutes of the extraordinary general meeting of shareholders and of the directors, referred to above, were both laid before the members of the consulting committee and all of the resolutions passed in both meetings were unanimously approved and confirmed. The consulting committee, under the articles of association of Behn, Meyer & Company, Limited, is the supreme corporate authority. It is provided in its said articles of association that—

> "The Consulting Committee shall have power from time to time . . . to issue and give to the

Directors all such general or special directions with regard to the management of the Company's business or any matter connected therewith or incidental thereto, and not inconsistent or contrary to the Ordinance [i.e., The Companies Ordinance, 1889, of the Straits Settlements], as they may think fit, and all such directions shall be implicitly carried into effect and obeyed by the Directors forthwith or within such time as shall be limited by the Consulting Committee or in default of limitation as shall be reasonable under the circumstances;" and further that—

"The Office of Director shall be vacated if he refuses or neglects to carry out or comply with any general or special directions given or issued by the Consulting Committee."

XXXV. Thereafter and on December 14, 1921, Behn, Meyer & Company, Limited, duly designated and appointed the aforementioned Emil W. Martens of New York its agent and attorney-in-fact in and by a power of attorney, a copy whereof is hereto annexed, made part hereof and marked Exhibit C. The said power of attorney was duly executed on behalf of the company by all the members of its consulting committee and by the said O. M. H. Sielcken as director, pursuant to the corporate action hereinbefore set forth. A duplicate of the said power of attorney was heretofore filed with the Alien Property Custodian on or about January 16, 1922. Said power of attorney grants to the said Martens all the power and authority necessary to the prosecution and maintenance of the suit now before this court upon appeal. Among other things, the said power of attorney authorizes the said Martens "to institute in its [i. e., Behn, Meyer & Company, Limited's] name such suit or

suits in equity to establish the interest, right, title or debt so claimed [by the said company], as may be allowed by law."

XXXVI. Thereafter and on December 15, 1921, Behn, Meyer & Company, Limited, by its said director, O. M. H. Sielcken, thereto duly authorized in and by the corporate proceedings above referred to, duly executed and delivered to Messrs. Jerome, Rand & Kresel, a firm of attorneys-at-law in the city of New York, a letter of retainer reading in part as follows:

> "We hereby retain you as our attorneys in the matter of prosecuting and enforcing the claim of Behn, Meyer & Company, Limited, against the Alien Property Custodian and the Treasurer of the United States for moneys representing the proceeds of the assets of the Philippine Branches of Behn, Meyer & Company, Limited, heretofore seized and/or liquidated by the Governmental authorities of the United States. We hereby authorize you to take all such steps and proceedings and bring all suits that may be in your opinion necessary or proper in the premises."

XXXVII. Pursuant to the requirements of section 9 of the Trading with the Enemy Act, Behn, Meyer & Company, Limited, under date of December 14, 1921, made and executed a notice of claim directed to the Alien Property Custodian for the proceeds of the liquidation of its Philippine branches as aforesaid. The said claim was duly executed and verified in its behalf by (1) the said director Sielcken, (2) the said director and attorney-in-fact Martens, and (3) all the members of the consult-

ing committee of the company above mentioned. The said notice of claim was thereafter and on or about January 16, 1922, duly filed with the Alien Property Custodian.

XXXVIII. On January 1, 1922, the aforesaid firm of Jerome, Rand & Kresel was reconstituted under the firm name and style of Guthrie, Jerome, Rand & Kresel; and on January 3, 1922, Behn, Meyer & Company, Limited, by its said director Sieleken, thereto duly authorized in and by the corporate proceedings above referred to, duly executed and delivered to said Messrs. Guthrie, Jerome, Rand & Kresel, lawyers of the city of New York, an additional letter of retainer reading in part as follows:

> "We hereby retain you to represent us before any court, committee, commission, officer or other governmental agency, which may be authorized by any act of Congress or any officer of the Government of the United States, to pass upon or adjudicate claims to property and money in the hands of the Alien Property Custodian or the Treasurer of the United States, or both, including such a claim of Behn, Meyer & Company, Limited, to certain property and money in the hands of the Alien Property Custodian or the Treasurer of the United States, or both, which are the proceeds of the liquidation and sale of the branches of Behn, Meyer & Company, Limited, located in the Philippine Islands.
>
> "This retainer is in addition to the retainer of Messrs. Jerome, Rand & Kresel, whose successors you are, dated the 15th day of December, 1921, and signed by Behn, Meyer & Company, Limited, by O. M. H. Sieleken, Director."

XXXIX. Thereafter and in or about June, 1922, Messrs. Guthrie, Jerome, Rand & Kresel, as attorneys

for Behn, Meyer & Company, Limited, retained Messrs. Howe, Swayze & Bradley, attorneys-at-law in the city of Washington, to act as local attorneys and attorneys of record for them and the said company, and thereafter caused the said last mentioned firm to file the bill of complaint in the case at bar in the Supreme Court of the District of Columbia. The said bill of complaint herein was duly verified on July 27, 1922, by the said Emil W. Martens as a director of Behn, Meyer & Company, Limited, and as its attorney-in-fact under the power of attorney whereof Exhibit C hereto is a copy. In the proceedings subsequently had on and in relation to the said bill of complaint, the plaintiff, Behn, Meyer & Company, Limited, has been represented by various members of the aforesaid firm of Guthrie, Jerome, Rand & Kresel, and by their local Washington attorneys, the members of the firm of Howe, Swayze & Bradley.

XL. For the foregoing reasons it is submitted that the suit in the case at bar was in all respects properly brought by the above-named plaintiff corporation and its aforesaid attorneys at law and in fact and is now being duly and properly prosecuted and maintained by them.

That the alleged receiver has been guilty of laches in making the application to intervene.

XLI. The order purporting to appoint the said Lazarus G. Joseph, receiver of Behn, Meyer & Company, Limited, was made on August 10, 1922, two years and three months ago. The receiver and his attorneys then knew that the proceeds of the company's property were in the

hands of the Alien Property Custodian and had then been in his hands more than three years. One of the attorneys for the receiver, Henry D. Green, had in 1919 been an attorney in the Division of Insular Possessions of the Alien Property Custodian's office, and as such was even then familiar with the liquidation of the Philippine branches of Behn, Meyer & Company, Limited. Nevertheless, the said alleged receiver has not, until now, attempted to bring any suit looking to the recovery of the company's property.

XLII. The said alleged receiver carried on the various litigations and proceedings in the Philippine Islands, above referred to, in part with funds borrowed from some of his attorneys herein, and with the help of their services. In January, 1924, therefore, he was indebted to them, but without any receivership funds wherewith to pay them. For the purpose of securing funds to pay themselves, the said alleged receiver and some of his said attorneys filed with the Alien Property Custodian a claim to $10,000 of the moneys held for Behn, Meyer & Company, Limited. The said claim was filed pursuant to paragraph 10 of subsection b of section 9 of the Trading with the Enemy Act as amended March 4, 1923 (c. 285, 42 Stat. 1511), popularly known as the Winslow Act. The said paragraph authorizes the return of $10,000 to a corporation whose property is in the hands of the Alien Property Custodian only if "it is not otherwise entitled to the return of its money or other property, or any part thereof, under this section." The manifest operation of this provision is to exclude any corporation which is en-

titled to the return of its property by the Alien Property Custodian under subsection a of section 9 as a "person not an enemy or ally of enemy."

XLIII. If the claim for $10,000 had been allowed and paid to the attorneys for the alleged receiver, their act, if valid and authorized, would have been a concession that Behn, Meyer & Company, Limited, was an "enemy" under the Trading with the Enemy Act and not entitled to the return of its property under subsection a of section 9 as a "person not an enemy or ally of enemy." The truth was otherwise however, as is indeed apparent from the fact that the said alleged receiver's papers before this court on his present application themselves set forth that Behn, Meyer & Company, Limited, a British corporation not doing business in or with any enemy territory, was not an "enemy" as defined in the Trading with the Enemy Act and that the seizure and liquidation of its property by the Alien Property Custodian as such were illegal.

XLIV. In January, 1924, the said receiver's attorneys discovered that they could not secure the payment of $10,000 out of the funds of Behn, Meyer & Company, Limited, in the hands of the Alien Property Custodian, because the company itself had theretofore and in 1922 sued to recover the funds so held and the said suit was still pending. Thereupon the said attorneys of the alleged receiver applied to the attorneys for Behn, Meyer & Company, Limited, for their consent that $10,000 be paid to them by the Alien Property Custodian. That was the

first notice which the said attorneys for the plaintiff corporation herein had of the existence of the alleged receivership.

XLV. Inquiry by the said attorneys for Behn, Meyer & Company, Limited, then disclosed, not only the nullity of the alleged receivership, but that the alleged receivership did not then even nominally exist, and that, as shown by Exhibits A and B hereto annexed, the null and void order of August 10, 1922, purporting to appoint the said Joseph receiver, had been expressly vacated and quashed by the Court of First Instance of Manila itself on September 26, 1923, four months before.

XLVI. On or about January 31, 1924, the attorneys for the said alleged receiver were notified by Messrs. Guthrie, Jerome, Rand & Kresel, the said attorneys of Behn, Meyer & Company, Limited, of the setting aside of the appointment of the said alleged receiver and of the said opinions of the Court of First Instance of Manila, and that Behn, Meyer & Company, Limited, repudiated the claims of the alleged receiver and his attorneys to act in behalf of the company in any particular; that the said attorneys for the company would not consent to the payment to them of any sum by the Alien Property Custodian, and that their claims in that respect were without warrant in law or fact and unauthorized and prejudicial to the interests of the company.

XLVII. During the remainder of the present year the alleged receiver and his said attorneys took no step to challenge the right of the plaintiff and its said attorneys

herein. In that period the cause at bar was argued by the plaintiff's said attorneys in the Court of Appeals of the District of Columbia, an appeal was taken to this court by them, a motion to advance was made by them and the brief on behalf of the appellant was prepared by them. The cause was then set for hearing in this court on November 17, 1924. Thereupon the said alleged receiver gave notice of the present application to be made on the same day.

Further answering the aforesaid application, Behn, Meyer & Company, Limited, supplementing the foregoing,—

XLVIII. Denies the allegations contained in paragraphs 1, 2 and 3 of the petition for leave to intervene.

XLIX. Denies the allegation of paragraph 1 of the motion that the license or authority of Behn, Meyer & Company, Limited, to do business in the Philippine Islands, has never been cancelled or revoked by the Government of the Philippine Islands.

L. Denies the allegations contained in paragraph 2 of the motion.

LI. Admits that Behn, Meyer & Company, Limited, continued to do business in the Philippine Islands until February, 1919, and denies all the other allegations of paragraph 3 of the motion.

LII. Is without knowledge concerning the allegations of paragraph 4 of the motion.

LIII. Denies the allegations contained in paragraph 6 of the motion, except that it admits the allegation therein that the alleged receivership of Lazarus G. Joseph has been set aside, and alleges that it is without knowledge concerning the allegations therein in respect of the tak-

ing of an appeal and the filing of a bill of exceptions by the said Joseph.

LIV. Denies the allegations contained in paragraph 7 of the motion, except the allegation in respect of the receipt by the intervenor's attorneys of the bill of exceptions, as to which it is without knowledge.

LV. Denies the allegations contained in paragraph 8 of the motion.

LVI. Is without knowledge concerning the allegations contained in paragraph 9 of the motion.

LVII. Denies the allegations contained in paragraph 10 of the motion.

LVIII. Denies the allegations contained in paragraph 11 of the motion.

WHEREFORE the plaintiff and appellant herein, Behn, Meyer & Company, Limited, prays that the application of the said alleged receiver, Lazarus G. Joseph, for leave to intervene herein and be substituted for the said plaintiff and for other relief, be in all respects denied.

Washington, D. C., November, 1924.

BEHN, MEYER & COMPANY, LIMITED,
Plaintiff-Appellant,
By EMIL W. MARTENS,
Attorney-in-fact.
and
GUTHRIE, JEROME, RAND & KRESEL,
Its Attorneys-at-law.

WILLIAM D. GUTHRIE,
ISIDOR J. KRESEL,
BERNARD HERSHKOPF,
Of counsel for plaintiff-appellant.

STATE OF NEW YORK,
County of New York, } ss.:

EMIL W. MARTENS, being first duly sworn, deposes and says that he is a director of Behn, Meyer & Company, Limited, the plaintiff and appellant in the above entitled cause, and also its attorney in fact; that he has read the foregoing answer to the application of Lazarus G. Joseph as alleged receiver of the said plaintiff and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

EMIL W. MARTENS.

Sworn to before me this
13th day of November, 1924.

M. ROSALIE MASER,
Notary Public, New York County.
[SEAL]

EXHIBIT A.

UNITED STATES OF AMERICA

PHILIPPINE ISLANDS.

COURT OF FIRST INSTANCE OF MANILA
DIVISION III.

BEHN, MEYER & COMPANY, LTD. Plaintiffs *vs.* J. S. STANLEY, *et al* Defendants.	No. 14757

DECREE.

Three motions have been submitted for adjudication by the court, the motion of Lazarus G. Joseph, who in his capacity as judicial depositary or receiver appointed to take over the properties of the plaintiffs, applies for an order compelling J. M. Menzi to deliver to him the books of said plaintiffs, which said Menzi now has in his possession; the motion of said J. M. Menzi praying for the rejection of said petition and the motion of John Bordman, J. M. Menzi and "The Bank of the Philippine Islands" praying for leave to intervene in these proceedings for the purpose of requesting the setting aside of

the order of the court of August 10, 1922, whereby said Lazarus G. Joseph was appointed judicial depositary or receiver in this case.

An examination of the record shows that Messrs. A. N. Jureidini & Bros., who had recovered judgment against the plaintiffs on February 24, 1922, for a sum of 3488 pesos, and for the costs, applied for and secured a writ of execution on the ground of said judgment on April 6, 1922. The execution issued for this purpose having been returned by the sheriff unsatisfied for the reason that he had been unable to find within the jurisdiction of the court any property of the aforementioned plaintiffs on which execution could be levied for the purpose of securing payment of the amount contemplated in the judgment, said Messrs. A. N. Jureidini & Bros. upon their alleging that they have discovered that said plaintiffs had still sufficient property in the Islands, secured the appointment of a depositary or a receiver on August 10, 1922, there having been appointed as such Mr. Lazarus G. Joseph. The depositary or receiver thus appointed thereupon requested that J. M. Menzi, who is in possession of the books formerly belonging to the plaintiff, be ordered to surrender to him said books, alleging that the surrender of such books should be ordered in order to facilitate to him the discharge of his duties and in order to make it possible to bring the matter to an end.

J. M. Menzi, by his very detailed answer to the order served upon him ordering him to show cause why the petition of the depositary or receiver should not be granted, submitted the prayers set forth in the motions

referred to hereinabove. It is a fact appearing from the documents attached to the aforementioned motions of said Menzi, John Bordman and The Bank of the Philippine Islands, who have applied for permission to intervene in these proceedings for the purposes set forth above, that at the present time said Mr. Menzi holds the account books formerly belonging to the plaintiffs, Behn, Meyer & Co., Ltd.; that he came in possession of said books due to said books having been delivered to him by John Bordman, who had purchased all the properties, rights, chose in action and even the papers, vouchers and account books of said plaintiffs.

Said documents show furthermore (this circumstance, by the way, has been neither contested nor contradicted by Lazarus G. Joseph) that up to February 16, 1918, namely approximately 4 years before the date on which Messrs. A. N. Jureidini & Bros. recovered the aforementioned judgment against the aforementioned plaintiffs, the Alien Property Custodian in the Philippine Islands had appointed, pursuant to the provisions of the Act of Congress of the United States of America of October 12 (6?), 1917, entitled: "An act defining, regulating and punishing trade with the enemy, etc." W. D. Pemberton, as depositary or receiver of all the properties of said plaintiffs. At a later date and under a permit granted for this purpose by the representative in the Philippine Islands of the Alien Property Custodian, there were sold all said properties, including the trademarks, accounts receivable, vouchers of payment and other evidences of debt and the account books of said plaintiffs, to John Bordman, by order and under the supervision of said Alien Property Custodian in the Philippine Islands, for

a sum of 660,000 pesos, which sum was paid to him by the Bank of the Philippine Islands, there having been turned over to the Alien Property Custodian a sum of 392,674.96 pesos, which is the amount of the proceeds of the liquidation of said property.

Such being the facts of the case, and the aforementioned law of the Congress of the United States of October 12 (6?), 1917, providing as it does by its section 17 that the courts of the United States are the only ones vested with jurisdiction to take cognizance of matters arising or that may arise out of any of the facts contemplated therein, namely out of facts or circumstances similar in character to the matters of Messrs. Jureidini & Bros., with which we are concerned because, as explicitly provided in Section 18 of said law, the jurisdiction of the courts of the Philippine Islands does not extend beyond the cognizance of such acts of a criminal character as are contemplated therein, this court should not and cannot order the delivery to Lazarus G. Joseph of the account books in question. Although these books were formerly the property of Behn, Meyer & Co. Ltd., they ceased to be the property of said company upon their being sold by the Alien Property Custodian to John Bordman under the provisions of the law of the Congress of the United States, to which reference has been made. This is the more indisputable as section 9 of said law contains among others the following provisions:

"That any person not being an enemy or an ally of the enemy claiming any interest in, or any right or title to any money or other property conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian by virtue of this law and held by him or by the

Treasurer of the United States or owing to him by an enemy or ally of the enemy, whose property or any parts of whose property has been conveyed, transferred, assigned, or paid to the Alien Property Custodian by virtue of this law and is held by him or by the Treasurer of the United States, shall have the right to submit to said custodian a sworn statement of claim setting forth such circumstances as may be required to be set forth by said custodian. . . ."

"Except as otherwise provided in this law, monies or other properties conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian shall not be subject to any lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any Court."

At the time when there was issued the order appointing a depositary or receiver in this case, the attention of the court was not called to the fact that the properties belonging to the plaintiffs herein had been sold at a prior date by the Alien Property Custodian to John Bordman. Had the attention of the court been called to such a circumstance, said order would not have been made, especially if it were shown that said properties had been sold long before the rendering of the judgment in favor of Messrs. A. N. Jureidini & Bros.

The remedy and relief available now to Messrs. Jureidini & Bros. is to avail themselves of the action contemplated in section 10 (9?) of the law of Congress of October 12 (6?), 1917, repeatedly referred to above.

For these reasons, whereas it has been shown, in the opinion of the Court, the interest of J. M. Menzi, John Bordman and Bank of the Philippine Islands in these

proceedings, the interest of Mr. Bordman lying in the fact that he has acquired through purchase for a sum of 660,000 pesos, all the interests, rights, choses in action and vouchers of the plaintiffs herein, the interest of J. M. Menzi lying in the fact that he was appointed by said Mr. Bordman to take charge of said properties and books in his name, and the interest of the Bank of the Philippine Islands lying in the fact that this bank paid the sum of money for which said Bordman had effected the purchase.

Now therefore it is resolved to allow such parties as they are hereby allowed and authorized, to intervene in this case; and whereas the court has come to the conclusion that the court has or had no jurisdiction to appoint a judicial depositary or receiver due to the fact that all the properties of the aforementioned plaintiffs have been sold by the Alien Property Custodian pursuant to the law of Congress referred to above, now therefore it is resolved likewise to set aside and quash, as the same is hereby set aside and quashed, the order of the court of August 10, 1922, appointing as judicial depositary or receiver Lazarus G. Joseph. Let the bond given by said depositary or receiver for the faithful discharge of his duty be released; and it is hereby declared that J. M. Menzi is not bound to deliver to the aforementioned Lazarus G. Joseph the books of which he is now in possession, which books were formerly the property of the plaintiffs, Messrs. Behn, Meyer & Co., Ltd.

Thus ordered.

Manila, Philippine Islands. September 26, 1923.

Anacleto Diaz,
Judge.

EXHIBIT B.

COPY

UNITED STATES OF AMERICA

PHILIPPINE ISLANDS

COURT OF FIRST INSTANCE OF MANILA

DIVISION III.

BEHN, MEYER & Co., LTD. Plaintiff, *vs.* J. S. STANLEY, et al. Defendant.	No. 14757

DECREE.

By the motion submitted on October 3, 1923, by the depositary or receiver appointed in this case and by A. N. Jureidini & Bros., application is made for a reconsideration of the order of the court of September 26, 1923. Although in said motion the grounds are not stated on which the motion is rested, it is to be inferred from the memorandum attached thereunto that these grounds are the following:

1—That the Alien Property Custodian has not sold the properties of the plaintiffs, Behn, Meyer & Co., Ltd.

2—That the Custodian could not have sold said property because said company had never been declared an enemy company pursuant to the law of Congress of the United States entitled: "An act defining, regulating and punishing trade with the enemy and making provision for other purposes," and that the aforementioned Alien Property Custodian has never obtained possession of said properties upon a proper request of surrender for the reason that such request was impossible in view of the fact that Messrs. Behn, Meyer & Co., Ltd., had been granted by the President of the United States the necessary license to trade with the enemy.

A careful consideration of the documentary evidence submitted by John Bordman and by J. M. Menzi, who had been allowed to intervene in this case, which evidence has not been contested and consists in exhibits A, B, C, D, E and F, shows how groundless are the reasons alleged in support of the aforementioned motion for reconsideration. Exhibit A shows that on February 16, 1918, the Alien Property Custodian took possession of the entire business and of all the properties of the aforementioned company, Behn, Meyer & Co., Ltd., there having been appointed as depositary or receiver Mr. W. D. Pemberton. Exhibits D and E show that the permit granted to Behn, Meyer & Co., Ltd., under the provisions of the aforementioned law of Congress did not contemplate the carrying on of the business in which said company was engaged but merely the sale and the liquidation of such business and the delivery to the Custodian of the proceeds of such sale and liquidation, should the Custodian make a request to this effect, and they show likewise, to-

gether with exhibits B and C, that such liquidation was carried out and that the business and all the properties of said company including its vouchers and books, were sold for a sum of 660,000 pesos to a certain Mr. John Bordman, and Exhibit F shows that on February 21, 1919, the Alien Property Custodian, through his representative in the Philippine Islands, after having decided that Behn, Meyer & Co., Ltd., were an enemy, requested them to surrender all their properties for the same to pass under his control and to be administered by him in accordance with the law.

The allegation that the Alien Property Custodian has failed to comply with the provisions of the aforementioned act of Congress on trade with the enemy and with the regulations enacted for the enforcement of said law, in taking the action he has taken and in acting in the manner he has acted in the case under consideration, namely in the case of this plaintiff, is not substantiated by the evidence and the presumption of the law is that he acted exactly as he should have acted and that he complied with all the provisions of the law bearing on the case.

On the ground of the aforementioned considerations, the Court is of the opinion that its decree of September 26, 1923, is sustained by the evidence and is in accordance with the law and should be maintained. Now, therefore, the motion of reconsideration for the aforementioned resolution is hereby rejected.

Thus ordered,

Manila, Philippine Islands, Dec. 3, 1923.

ANACLETO DIAZ, *Justice.*

EXHIBIT C.

STAMP

KNOW ALL MEN BY THESE PRESENTS, that BEHN, MEYER & COMPANY, LIMITED, a corporation organized under the laws of Straits Settlements, and having its registered office at Singapore in Straits Settlements, hereinafter referred to as the Company, does hereby make, constitute and appoint Emil W. Martens, whose address is 43 White St., New York City, its true and lawful attorney, for it and in its name, place and stead to take any and all action in conformity with the provisions of Section 9 of the "Trading with the Enemy Act" or any other provisions of said act and the executive orders and proclamations issued pursuant thereto, now in force or hereafter enacted or issued, which the Company itself might take if acting in person, with reference to the recovery and/or collection of any property or the proceeds thereof, money debt or claim which it may own or have, and which is now or may hereafter be in the possession of the Alien Property Custodian by virtue of the "Trading with the Enemy Act", or in case of a debt or claim, funds available for the payment of which may be in the possession of the Alien Property Custodian, whether received by the said Alien Property Custodian as the property of itself or another; and the Company does hereby give its said attorney full power and authority (including but not thereby limiting the generality of the foregoing powers) to file with the said Custodian for it and in its name such notice or notices of its claim under oath, in such form and

containing such particulars as the said Custodian shall require; to make for it and in its name whatsoever assents and applications for the conveyance, transfer, assignment or delivery to its said attorney for it of said money or other property as may be required or as its attorney may, in his discretion, deem proper, and to institute in its name such suit or suits in equity to establish the interest, right, title or debt so claimed, as may be allowed by law; and to settle and/or compromise any such claim and/or suits, and upon delivery of any or all of said money or other property to its said attorney, to execute in its name such receipts and acquittances therefor as may be required by said Alien Property Custodian and/or by the Treasurer of the United States.

And the Company does give and grant unto its said attorney full power and authority to do and perform all acts whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as it might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that its said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

This power is given in contemplation of all provisions of the "Trading with the Enemy Act", the executive orders and proclamations issued pursuant thereto, now existing or which may hereafter be enacted or issued, and of all rules of procedure with respect to claim under Section 9, now in force or which may hereafter be promulgated.

IN WITNESS WHEREOF, the said Company has caused its corporate name to be hereunto subscribed this 14th day of December, 1921.

BEHN, MEYER & COMPANY, LIMITED,

By

E. L. LORENZ MEYER
AD. LASPE
F. H. WITTHOEFFT
O. M. H. SIELCKEN

as Director.

In the presence of:

K. AULDER
KINR. BECK

Reg. No. 544-1921

GERMANY,
STATE OF HAMBURG,
City of Hamburg,
} ss.:

Before me, a notary public in and for the City of Hamburg, Germany, this 14th day of December, 1921, personally appeared EDUARD LORENZ LORENZ-MEYER, ADOLF FRIEDRICH HEINRICH LASPE, and FRANZ HEINRICH WITTHOEFFT, to me known and known to me to be the sole surviving stockholders of, and the members of the Consulting Committee of Behn, Meyer & Company, Limited, the corporation mentioned in the foregoing instrument, and they duly and severally acknowledged to me that they executed the same in the name and on behalf of said corporation.

DE CHAPEAUROUGE
Notary Public

[Seal]

AMERICAN CONSULATE-GENERAL AT HAMBURG, SS.:

No.

I, J. Klahr Huddle, Consul of the United States of America in and for the district of Hamburg, hereby certify that the seal of Dr. Paul De Chapeaurouge, Notary Public at Hamburg, Germany, and the signature of Dr. Paul De Chapeaurouge, appearing on the document hereto annexed are true and genuine, and are entitled to full faith and credit.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Seal of Office, this 15th day of December A. D. 1921.

[SEAL]

J. KLAHR HUDDLE,
Consul of the United States of America

[AMERICAN
CONSULAR STAMP]
Fee No. 173
U. S. Currency
Marks (Germany) 440

Reg. No. 5442-1921

GERMANY,
STATE OF HAMBURG, } ss.:
City of Hamburg,

Before me, a notary public in and for the City of Hamburg, this 14th day of December, 1921, personally appeared Otto Max Hermann Sielcken to me known, who being by me duly sworn did depose and say that he resided in Hamburg, that he is a director of Behn, Meyer & Company, Limited, the corporation described in and which executed the foregoing instrument, and that he signed his name thereto by order of the board of directors of said corporation.

DE CHAPEAUROUGE
Notary Public

[Seal]

AMERICAN CONSULATE-GENERAL AT HAMBURG, ss.:

No.

I, J. Klahr Huddle, Consul of the United States of America in and for the district of Hamburg, hereby certify that the seal of Dr. Paul De Chapeaurouge, Notary Public at Hamburg, Germany, and the signature of Dr. Paul De Chapeaurouge, appearing on the document hereto annexed are true and genuine, and are entitled to full faith and credit.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Seal of Office, this 15th day of December A. D. 1921.

J. KLAHR HUDDLE,
Consul of the United States of America

[SEAL]

[AMERICAN
CONSULAR STAMP]
Fee No. 174
U. S. Currency
Marks (Germany) 440